

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

2011 NOV 23 AM 9:00

SANDRA K MARKHAM, CLERK
 BY: *Jacqueline Harshman*

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR201080049

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY TWENTY-FIVE

MARCH 31, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
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4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs.) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant.)
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1 Proceedings had before the Honorable

2 WARREN R. DARROW, Judge, taken on Thursday,
3 March 31, 2011, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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PROCEEDINGS

(Proceedings continued outside presence of jury.)

THE COURT: We're on the record in State versus James Arthur Ray, with Mr. Ray and the attorneys present. The jury is not present.

I looked at this issue in some detail last night. I had said earlier in the case that this would not be a trial by surprise, that the disclosure rules would be followed. I do want to point out that disclosure and discovery matters often do not rise to being constitutional issues.

We've now had the victims' rights laws in effect for more than 20 years -- changed the ability to interview alleged victims. They didn't raise a constitutional issue. I note that the state has not objected to the defense disclosure regarding experts or regarding the defense of causation.

I'll note, though, that the 15.2 disclosure that Mr. Li provided -- it lists the defense of causation. And then, of course, Rule 15.2 requires that you list all the witnesses that will testify as to that defense. There are no witnesses listed at all for that.

MS. DO: Your Honor, there was a supplemental filed shortly after the initial disclosure listing Dr. Paul under causation.

THE COURT: Okay. I'm saying, in any event though, the state is not surprised. The possibility of poisoning has been discussed from the very start of the case, from the very outset. The term, again, of "organophosphates" has shown up in medical records early in the case.

I also want to point out that it's not correct to say that this anonymous statement, if we call it that, that was mentioned at opening, was offered for the truth. There was a rather extensive bench conference on that.

I made the remark that I don't know how there can be an instruction under Rule 105 about the limited nature of a remark in opening statements that is not even evidence.

Mr. Li volunteered to make a corrective statement, if you will, or qualify in opening. And he did that right after that.

So it was not in some sense offered for the truth. I do believe later in the opening there was a statement that I made to the jury about what the lawyers say is not evidence. Of course, that's

in the instruction. I think there was a remark to that effect. And it came up, I think, with regard to either that passage or one of the excerpts that was played from the CD. I remember saying something to the effect that this is just what the attorneys think might be evidence.

So the state has not been surprised in any way by this mention of organophosphates. As mentioned, the state did not complain about the nature of disclosure. Ms. Do has just indicated there was a supplement.

Do you know the date, roughly?

MS. DO: I don't, Your Honor. We could get it.

THE COURT: I need a ballpark at this point. We're talking about within 60 days, within 90 days. In any event, if there was a question about the nature of the defendant's causation defense in the sense of was it an organophosphate, was it heat, then that was cleared up on January 31st, 2011, in the interview. It was unmistakable at that time.

Now it's two months later. And it just is not appropriate to give an expert a lot of additional information to form an opinion and then have that happen right during trial.

This is not the time to be investigating cases. I said months ago -- it was months ago that I said rules of disclosure are going to be followed and it's not going to be a trial by surprise.

The case that I believe applies here is State v. Roque.

Anybody looked at that? That's been brought up before. 213 Ariz. 193. And that case has some distinctions, because in that case the expert whose opinion was not appropriately disclosed, according to the supreme court, that expert had formed the opinion prior to testifying.

I don't know if that's the case now. But apparently what's at stake here is the information that was provided by counsel yesterday, that I did not see until yesterday. What is apparently involved with regard to Dr. Lyon are all of these additional records to somehow supplement his opinion or something of that nature.

And, Mr. Hughes, I think you said you don't know if this has had any effect on his opinion.

MR. HUGHES: Your Honor, Dr. Lyon was in the hallway this morning. I asked him if he had looked at any of these medical records. He told me he'd

1 not looked at it. The only thing he had looked at
2 was a separately disclosed document that we've
3 shown defense, which is the photograph of the rat
4 poisoning or the rat poison that was allegedly
5 used.

6 In the doctor's autopsy report, he -- I
7 believe that he'll find in both autopsies he ruled
8 out poisoning. So it's not a new conclusion. I
9 asked him this morning if he knew what the effects
10 of rat poison were.

11 And he said, yeah. He didn't think there
12 was rat poisoning in this case. As far as all
13 those medical records, he said that he had not
14 reviewed any of them.

15 THE COURT: Well, that changes the picture
16 considerably.

17 Ms. Do?

18 MS. DO: Thank you, Your Honor. I also
19 confirmed with Dr. Lyon this morning. And he
20 indicated he had not reviewed any of the materials
21 supplied to him on March 24th. My main concern --
22 and I think that should give us some direction on
23 whether or not he should be able to go in to the
24 2005 medical records.

25 THE COURT: Well, I haven't gotten to that

1 yet. I was looking at the overall issue and was
2 going to propose that if he had gotten these
3 records and it had been the situation where he had
4 changed the opinion, looking at the Roque case, one
5 solution is to allow an interview. Another
6 solution, perhaps, would be to just proceed. I was
7 going to allow an interview this morning.

8 MS. DO: Thank you. If I could, I think there
9 are three separate buckets here. With respect to
10 the first, I'm ready to proceed. He has not looked
11 at any of the materials. It has not affected his
12 opinion on cause of death.

13 The second bucket is what Mr. Hughes just
14 referred to. Apparently there is now an opinion
15 that he's ruled out rat poison. I have studied the
16 autopsy report. They sent out blood samples to
17 test for illicit drugs. There has never been an
18 opinion in this case by this medical examiner that
19 he's ruled out poisons of any kind. Apparently
20 that is a new conclusion that I'm learning now in
21 front of the Court.

22 And then a third issue. We can get to it
23 when the Court is ready. Whether or not under
24 Rule 803 Mr. Hughes is entitled to go into
25 inadmissible evidence through the expert's

1 testimony.

2 THE COURT: The question of organophosphates,
3 pesticides -- that has come up at trial. I just
4 assumed that there would be questions about that to
5 an expert.

6 Let's clear this up. Is he listed as an
7 expert on cause and manner of death? Is that the
8 subject? Is that the actual disclosure?

9 MS. DO: Yes.

10 THE COURT: Mr. Hughes, is that the fashion in
11 which he's been disclosed?

12 MR. HUGHES: I believe so. I'd have to pull
13 our disclosure statement. I believe he's the
14 medical examiner. He's given a written opinion as
15 to cause and manner of death in the form of the
16 autopsy report. He's been interviewed twice about
17 that opinion.

18 THE COURT: If you look back at State v.
19 Roque, it's very important to see what was
20 disclosed. Then there is the obligation to
21 disclose any opinion. And that would apply to both
22 sides too.

23 Obviously if the defense expert had
24 somehow formed a new opinion, there could be
25 disclosure issues on that as well. It's coming up

1 in this context right now.

2 But you have to know what was disclosed
3 in the first place to gauge whether or not there
4 has been some kind of disclosure violations. I
5 appreciate the important concepts here. But
6 rhetoric is not particularly helpful in deciding
7 these kinds of disclosure issues when we get to
8 that.

9 I have difficulty, Ms. Do, in seeing why,
10 since this has come up in trial, this expert
11 wouldn't be able to be questioned about this other
12 aspect. If you find -- if there is a cause and
13 manner of death, I would think that the expert goes
14 through a process of eliminating things and
15 considering things.

16 On what basis would it be that that
17 couldn't be covered?

18 MS. DO: Your Honor, during my interview of
19 Dr. Lyon -- I don't know -- back in June 2010, I
20 spent a considerable amount of time with him
21 reviewing his investigation of cause of death. I
22 asked him what his difference of diagnoses were in
23 this case, what he ruled out. There was no mention
24 of rat poison.

25 I don't think it's rhetoric. I do

1 believe if there is an additional opinion, that he
2 has now considered another cause and has ruled that
3 out -- this is rat poison we're talking about.

4 We're not talking about heat stroke or the illicit
5 drugs he tested for.

6 Let me just say this, Your Honor. I'm
7 ready to proceed. I do believe there has been a
8 disclosure violation, but I'm ready to proceed.
9 The only issue that I have concern with is the
10 Daniel P. 2005 medical records. If the Court wants
11 to move to that --

12 THE COURT: You say -- you think there is a
13 disclosure violation, but you'll move on. Do you
14 want to interview him this morning?

15 MS. DO: May I have a moment, Your Honor?

16 THE COURT: Yes.

17 MS. DO: Your Honor, I'm fine to proceed.

18 THE COURT: Then with regard to the 2005
19 incident -- we'll call it that. That's another
20 item --

21 Well, Mr. Hughes, he hasn't looked at
22 that either, though; correct?

23 MR. HUGHES: As far as I know, he hasn't,
24 Judge. I don't know how I could ask him questions
25 about something that -- I suppose if the defense

1 somehow leads him down a path about it. But
2 barring that -- which I would be very surprised if
3 they would do. Barring that, I don't see how I can
4 ask him about something he doesn't know about.
5 It's not my intention to ask him about the other
6 medical records that he has not reviewed.

7 THE COURT: I don't see that's an issue
8 either, then.

9 MS. DO: That's fine, Your Honor.

10 THE COURT: I do want to note also the unique
11 nature of medical examiners as witnesses. They are
12 experts, but they really have an element of
13 independence. I don't know why one party or the
14 other would have any particular access.

15 Am I missing something on that,
16 Mr. Hughes?

17 MR. HUGHES: Your Honor, they're witnesses
18 available to both sides. Again, there were
19 comprehensive interviews. I find it interesting
20 that in January 7th he was again interviewed by the
21 defense. And they never asked him any questions
22 about organophosphates in that interview. And that
23 was months after Dr. Paul, the defense expert, had
24 indicated he had had his -- he had first formed the
25 opinions that he had reached.

1 THE COURT: And the defense is ready to
2 proceed, and you can ask him about those things.

3 MR. HUGHES: Thank you.

4 THE COURT: That was -- there was no request
5 for further interviewing. And so yes. You can ask
6 him about that.

7 MR. HUGHES: Thank you, Your Honor.

8 THE COURT: We have an issue with our bailiff.
9 She's quite ill. And we're getting a substitute
10 bailiff for this morning. And we will start as
11 soon as we can.

12 And is there anything else you would like
13 to discuss before we start, Mr. Hughes?

14 MS. POLK: May we have a moment, Your Honor?

15 THE COURT: Of course.

16 MR. HUGHES: Your Honor, Ms. Polk mentioned an
17 issue that relates to Dr. Lyon that's probably
18 going to come up next week. The other medical
19 examiner, Dr. Mosley, is set for Friday, which
20 would be tomorrow.

21 I'm not sure if we're going to get to
22 him. But if we do, I don't know if he's reviewed
23 the records or not. And certainly we can afford an
24 opportunity for the defense to interview him if
25 indeed he has reviewed those records. I just don't

1 know if he has or hasn't.

2 But that, the similar issue with Dr.
3 Lyon, is going to raise its head again.

4 THE COURT: Ms. Do?

5 MS. DO: Again, Your Honor, my main concern
6 is, in fact, to his review and reliance on the 2005
7 records. I'd like the opportunity to deal with
8 that before he takes the stand.

9 THE COURT: Yes. If it's a question of
10 wanting -- I'm likely to say that you can interview
11 him and then go from there. If it's just something
12 that opens up the need for something else, then I
13 have to see what I'm dealing with.

14 If that's the case, I want to be able to
15 plan for when the jurors are going to be here. I
16 don't want to have a situation where they're
17 showing up and there needs to be an interview. I
18 want to be aware of that.

19 MS. DO: Well, he's scheduled for tomorrow. I
20 believe he'd be coming up from Flagstaff.

21 MR. HUGHES: Flagstaff.

22 MS. DO: I don't know when he would be
23 available for interview. I think there needs to be
24 time for argument with the Court.

25 THE COURT: True. We'll see where we are with

1 Dr. Lyon today.

2 The other matter that's going to come up
3 has to do with Mr. and Mrs. Hamilton. That's what
4 was raised first. I've made some comments that
5 apply there to the effect that this is really not
6 the time for investigation. The rules do allow for
7 late disclosure and unusual circumstances. They're
8 there and they'll be applied if that comes up.

9 But in general, this is not the time, six
10 weeks in to trial, to be investigating matters that
11 have been disclosed and talked about for over a
12 year.

13 Ms. Do, did you have anything else?

14 MS. DO: No, Your Honor. Thank you.

15 THE COURT: Thank you.

16 (Proceedings continued in the presence of
17 jury.)

18 THE COURT: The record will show the presence
19 of the defendant, Mr. Ray; the attorneys, the jury.

20 Ladies and gentlemen, as you know by now,
21 Ms. Rybar is not feeling well today. Diane
22 Troxell, who you've met, she's going to be
23 assisting with the bailiff duties this morning
24 anyway.

25 If the parties are ready to proceed.

1 Mr. Hughes, you may call your next
2 witness.

3 MR. HUGHES: Thank you, Your Honor. The state
4 calls Dr. Lyon.

5 THE COURT: Doctor, please step to the front
6 of the courtroom where the bailiff is directing you
7 here in front of clerk.

8 Raise you're right hand to be sworn.

9 ROBERT LYON,
10 having been first duly sworn upon his oath to tell
11 the truth, the whole truth, and nothing but the
12 truth, testified as follows:

13 THE COURT: Please be seated here at the
14 witness stand.

15 Sir, please begin by stating and spelling
16 your full name.

17 THE WITNESS: My name is Robert Lyon;
18 R-o-b-e-r-t; Lyon, L-y-o-n.

19 THE COURT: Thank you.

20 Mr. Hughes?

21 DIRECT EXAMINATION

22 BY MR. HUGHES:

23 Q. Good morning.

24 A. Good morning.

25 Q. Can you tell us, sir, what do you do for

1 a living.

2 A. I'm a medical examiner for Yavapai County
3 and for Maricopa County.

4 Q. And how long have you been a medical
5 examiner?

6 A. About 11 years.

7 Q. And how long have you been a medical
8 examiner in Yavapai County?

9 A. About one year and a half.

10 Q. And did you have to have any special
11 training to become a medical examiner?

12 A. Not a medical examiner but a forensic
13 pathologist, which is usually a medical examiner.

14 Q. Are you a forensic pathologist?

15 A. Yes.

16 Q. Can you tell us what a forensic
17 pathologist is.

18 A. It's that branch of medicine that uses
19 the knowledge and principles of medicine and
20 applies them to problems in the field of law and
21 investigating death and determining causes and
22 manner of death.

23 Q. And how long have you been a forensic
24 pathologist?

25 A. About 11 years.

1 Q. Can you tell us what education you had to
2 become a forensic pathologist.

3 A. I attended medical school at the
4 University of Health Sciences in Kansas City,
5 Missouri. I completed residency in anatomic and
6 clinical pathology at the University of Texas,
7 Medical Branch, Galveston and a forensic
8 pathologist fellowship in Tampa, Florida.

9 Q. Do you have any board certifications?

10 A. Yes. I'm board certified in anatomic,
11 clinical, and forensic pathology.

12 Q. And from -- who is -- who certified you?
13 Which boards?

14 A. The American Board of Medical
15 Specialties.

16 Q. And how long have you been board
17 certified?

18 A. About 11 years for forensic pathology and
19 about 15 years for anatomic and clinical pathology.

20 Q. How do you go about becoming board
21 certified?

22 A. Complete an accredited medical school,
23 followed by an accredited training in a specialty,
24 and then sit for the board exams and pass them.

25 Q. Do you know whether all medical examiners

1 are board certified?

2 **A. Not all medical examiners are board**
3 **certified. Not all medical examiners are**
4 **physicians.**

5 **Q.** And do you have any professional medical
6 licenses?

7 **A. Yes. I'm licensed in Arizona and Texas.**

8 **Q.** And what are those licenses?

9 **A. Licensed to practice medicine in the**
10 **state of Arizona and licensed to practice medicine**
11 **in the state of Texas.**

12 **Q.** And have you had any experience teaching
13 or lecturing in the fields of your expertise?

14 **A. Yes.**

15 **Q.** And can you tell us a little bit about
16 that.

17 **A. I was a forensic pathologist and**
18 **instructor at University of -- at Texas Tech**
19 **University Health Sciences Center in Lubbock,**
20 **Texas, for about four years, where I taught**
21 **residents how to do autopsies.**

22 **Q.** And other than your work as a medical
23 examiner in Maricopa County and in Yavapai County,
24 have you worked as a forensic pathologist for
25 anyone else?

1 **A. Yes. I worked as a forensic pathologist**
2 **and medical examiner for Lubbock County, Texas, and**
3 **also as a forensic pathologist for Texas Tech**
4 **University Health Sciences Center in Lubbock,**
5 **Texas, for about four years.**

6 **Q.** And are you a full-time or the only
7 medical examiner, either in Maricopa County or
8 Yavapai County?

9 **A. No.**

10 **Q.** Can you explain how that process works as
11 far as medical examiners in Yavapai County.

12 **A. Yavapai County approached Maricopa County**
13 **medical examiner office for coverage by forensic**
14 **pathologists in their office while they search for**
15 **a forensic pathologist to fill the position here in**
16 **Yavapai County.**

17 **So three of us forensic pathologists in**
18 **Maricopa County agreed to cover Yavapai County**
19 **forensic cases.**

20 **Q.** And where, then, do you do the most or
21 the bulk of your medical examining? Which county?

22 **A. Maricopa County full time and then**
23 **Yavapai County part time temporary.**

24 **Q.** And have you ever testified as an expert
25 previously in court?

1 **A. Yes.**

2 **Q.** And do you know which courts you've
3 testified in?

4 **A. Quite a few courts and quite a few**
5 **counties in Panhandle, Texas, and Maricopa County**
6 **and Yavapai County.**

7 **Q.** Do you have an idea how many autopsies
8 you have performed?

9 **A. About three to 4,000.**

10 **Q.** And have you assisted in other autopsies?

11 **A. Yes.**

12 **Q.** And do you have any idea how many you've
13 assisted in?

14 **A. That would have occurred during my**
15 **training. Maybe 100 or 200.**

16 **Q.** And can you tell us the difference
17 between performing an autopsy and assisting in an
18 autopsy.

19 **A. Assisting, you do what your mentor**
20 **instructs you to do during the autopsy. That's how**
21 **you learn. Once you're out working and board**
22 **certified, you could do the autopsy or supervise**
23 **the autopsy or conduct the autopsy.**

24 **Q.** Have you ever supervised other doctors'
25 autopsies?

1 **A. Yes.**

2 **Q.** And can you tell us -- do you have an
3 idea how many autopsies you supervised?

4 **A. I supervised residents in training at**
5 **Texas Tech University for about four years. And**
6 **that would be about 100 to 200 autopsies.**

7 **Q.** Can you tell us the general process of
8 how you as a medical examiner attempt to determine
9 a manner or cause of death.

10 **A. I request initial background information**
11 **about the death, the circumstances around the**
12 **death, medical history of the person that died. An**
13 **autopsy is done, which is an external and internal**
14 **examination of the body looking for disease and**
15 **injury.**

16 **Specimens are collected for toxicology.**
17 **Sometimes X rays are taken. And after all those**
18 **studies are completed, taken everything together, I**
19 **render an opinion as to the cause and manner of**
20 **death.**

21 **Q.** Can you tell us what the difference is or
22 what the meanings are of the words "manner" and
23 "cause."

24 **A. Cause of death is that physiologic event**
25 **which start the death process. Manner of death is**

1 **a classification into which the death is placed.**

2 **Q.** And do you ever determine legal
3 responsibility for a death?

4 **A. No.**

5 **Q.** Does the medical examiner determine
6 manner and cause of death for every person that
7 becomes deceased?

8 **A. No.**

9 **Q.** How do you determine whether to make a
10 determination in to that?

11 **A. If the death is not caused solely by**
12 **disease, then it comes under the jurisdiction of**
13 **the medical examiner and is investigated.**

14 **Sometimes physicians are out of town and**
15 **are unable to sign death certificates. And in**
16 **those cases a medical examiner might investigate**
17 **that death.**

18 **Q.** And to investigate a death, what records
19 would you typically review?

20 **A. I would request background information**
21 **from law enforcement if it's available. Most**
22 **offices will have an investigator that will obtain**
23 **initial background information for the doctor.**
24 **Medical records are requested if they're pertinent.**

25 **Q.** And how do you obtain, for example,

1 medical records?

2 **A. Our investigator will subpoena the**
3 **medical records from whoever has them, what**
4 **facility has them.**

5 **Q.** You mentioned your investigator. What
6 sort of staff is at your disposal as medical
7 examiner in Yavapai County?

8 **A. We have two medical investigators that do**
9 **office work and collect medical records and deal**
10 **with the public. And one of those investigators is**
11 **also an autopsy technician or assistant.**

12 **Q.** As the medical examiner, do you have the
13 ability to subpoena medical records when you need
14 them?

15 **A. Yes.**

16 **Q.** In the cases where you decide to make a
17 determination into manner and cause of death, do
18 you perform an autopsy in every one of those cases?

19 **A. No.**

20 **Q.** Can you tell us when you would perform an
21 autopsy and when you wouldn't.

22 **A. If there is criminal intent or the death**
23 **is suspicious or it cannot be determined the cause**
24 **of death without doing an autopsy, or if the death**
25 **occurs when a doctor is not available or not**

1 **observed or under unusual circumstances, those**
2 **would probably require an autopsy.**

3 **Q.** Can you tell us specifically what an
4 autopsy is and what an autopsy can tell a forensic
5 pathologist.

6 **A. An autopsy is external and internal**
7 **examination of the body, looking at the surface and**
8 **internal organs for disease and injury and**
9 **documenting those findings and collecting specimens**
10 **or toxicological analysis and sometimes obtaining**
11 **specimens of organs to be examined further under**
12 **the microscope.**

13 **Q.** Can an autopsy always tell you as a
14 forensic pathologist how a person died?

15 **A. No.**

16 **Q.** What can't an autopsy tell a forensic
17 pathologist?

18 **A. What it cannot?**

19 **Q.** Are there things that you can't learn
20 from an autopsy?

21 **A. Sometimes an autopsy is, essentially,**
22 **negative. In that case a lot of things are ruled**
23 **out and then other information is required, such as**
24 **the circumstances, medical record, and toxicology.**
25 **An autopsy is like a lab test. It's just one part**

1 **of the death investigation.**

2 **Q.** And what do you mean by a "negative
3 autopsy"?

4 **A. Meaning that it's, essentially, a normal**
5 **person and there is no disease or evidence of**
6 **injury.**

7 **Q.** Can the absence of any abnormal findings
8 in an autopsy be relevant to you in determining
9 manner or cause of death?

10 **A. Yes.**

11 **Q.** Can you explain how the absence of
12 information can be relevant.

13 **A. Well, if there is a question that an**
14 **injury caused the person's death and the autopsy**
15 **shows no injury, then the autopsy in that case may**
16 **rule out that an injury caused the death.**

17 **Q.** In this particular case, have you reached
18 an opinion as to the manner of death of James
19 Shore?

20 **A. Yes.**

21 **Q.** Have you reached an opinion as to the
22 manner or cause of death of Kirby Brown?

23 **A. Yes.**

24 **Q.** Did you perform an inquiry into the death
25 of Ms. Neuman who died at the Flagstaff Medical

1 Center?

2 **A. No.**

3 **Q.** Can you tell us why you didn't inquire in
4 to Ms. Neuman's death.

5 **A. She died in another county and came under**
6 **that county's jurisdiction. As I recall, I**
7 **reviewed medical records. Some of them might have**
8 **been hers as well as other patients that were**
9 **involved in the ceremony.**

10 **Q.** And why did you decide to conduct a
11 review in to James Shore's death?

12 **A. Because of the circumstances of the**
13 **death.**

14 **Q.** What were those circumstances?

15 **A. That there were a number of people**
16 **involved in a ceremonial lodge under hot conditions**
17 **and that multiple people had become ill and**
18 **transported to the hospital, and two of them had**
19 **died.**

20 **Q.** And why did you conduct a review into
21 Ms. Brown's death?

22 **A. For the same reason.**

23 **Q.** Did you prepare an autopsy report that
24 details your determination or your inquiry into
25 Mr. Shore's cause of death?

1 **A. Yes.**

2 **Q.** Does that autopsy report contain your
3 conclusions as to Mr. Shore's cause of death?

4 **A. Yes.**

5 **Q.** Doctor, I'm going to approach you with
6 exhibits 375 and 376 and ask you if you recognize
7 those documents?

8 **A. Yes.**

9 **Q.** Can you tell us what Exhibit 375 is.

10 **A. It's my autopsy report and a copy of the**
11 **toxicology report.**

12 MR. HUGHES: Your Honor, the state moves the
13 admission of Exhibit 375.

14 THE COURT: Ms. Do?

15 MS. DO: No objections, Your Honor.

16 THE COURT: 375 is admitted.
17 (Exhibit 375 admitted.)

18 **Q.** BY MR. HUGHES: Can you tell us what
19 Exhibit 376 is.

20 **A. The pages are a diagram on which I wrote**
21 **notes and an organ table of descriptions and**
22 **weights and identification tag filled out on the**
23 **decedent, some initial background information on**
24 **that identification tag and a document showing that**
25 **the cause of death was initially pended, pending**

1 **further study, and was amended to the present cause**
2 **and manner of death.**

3 MR. HUGHES: Your Honor, the state moves the
4 admission of Exhibit 376.

5 MS. DO: No objection.

6 THE COURT: 376 is admitted.
7 (Exhibit 376 admitted.)

8 **Q.** BY MR. HUGHES: Doctor, with respect to
9 Mr. Shore, can you walk us through the process of
10 how you made a determination about the cause of
11 death for Mr. Shore.

12 **A. He was a participant in the ceremonial**
13 **lodge where it was hot and people became ill. He**
14 **became unconscious, and bystander CPR was**
15 **initiated. He was transported to the hospital**
16 **where he was, essentially, dead on arrival.**

17 **The autopsy had findings of some**
18 **hypertensive and arterials clog and heart disease.**
19 **His toxicology was negative. Microscopical**
20 **examination of his heart, liver, and lung were**
21 **negative.**

22 **Taken everything together, it's my**
23 **opinion that he died from heat stroke.**

24 **Q.** And with respect to the autopsy, can you
25 tell us any particular findings that you found in

1 the autopsy that influenced your determination of
2 his cause of death?

3 **A. Yes. The autopsy is remarkable only for**
4 **his heart disease. Other than that, I did not find**
5 **any disease or injury.**

6 **Q.** Was that significant to you in
7 determining cause of death?

8 **A. Yes.**

9 **Q.** How was it significant?

10 **A. He has -- the findings of heat stroke are**
11 **nonspecific, and sometimes there are no findings.**
12 **In his case, he has heart disease. Did his heart**
13 **disease contribute to his death? I don't know. It**
14 **may have. But he need not have heart disease to**
15 **have died from heat stroke.**

16 **Q.** And, Doctor, with respect to the autopsy,
17 were you able to observe the general condition of
18 how Mr. Shore looked?

19 **A. Yes.**

20 **Q.** Do you remember or do you know whether --
21 could you characterize what sort of, for example,
22 haircut he had when he presented.

23 **A. His hair was one fourth inch long, brown,**
24 **and straight.**

25 **Q.** You mentioned that you observed some

1 coronary artery disease or problem with his heart?

2 **A. Correct.**

3 **Q.** Can you explain, if you would, the
4 significance of that in the cause of death.

5 **A. His heart was enlarged or heavy or had**
6 **increased muscle mass, in my opinion, as a result**
7 **of high blood pressure. He also had hardened or**
8 **arteriosclerotic heart disease with some plaque**
9 **obstructing the lumen of his coronary artery. A**
10 **heart like that is at risk for having a heart**
11 **attack.**

12 **Q.** Doctor, did you review any medical
13 records pertaining to Mr. Shore?

14 **A. Yes.**

15 MR. HUGHES: May I approach?

16 THE COURT: Yes.

17 **Q.** BY MR. HUGHES: Doctor, I'm going to show
18 you what's marked as Exhibit 378, which are the
19 Verde Valley Medical Center records, and 379, which
20 are the Verde Valley Fire District Ambulance
21 records. Can you tell me whether those are the
22 records you reviewed?

23 **A. Yes, they are.**

24 MR. HUGHES: Your Honor, the state moves for
25 the admission of Exhibit 378 and 379.

1 THE COURT: Ms. Do?

2 MS. DO: No objections, Your Honor.

3 THE COURT: 378 and 379 are admitted.
4 (Exhibit 378 and 379 admitted.)

5 **Q.** BY MR. HUGHES: Doctor, with respect to
6 the EMS report, do you recall what condition
7 Mr. Shore was in when he was first found by or when
8 Verde Valley Fire District first arrived to attend
9 to him?

10 **A. He was unconscious. People were**
11 **performing cardiopulmonary resuscitation. He was**
12 **not dressed. He was covered by a towel. His**
13 **initial heartbeat was pulseless electrical**
14 **activity, meaning that the heart has electrical**
15 **activity but it's not pumping or creating a pulse.**

16 **Q.** And do you know what condition Mr. Shore
17 was in when he arrived at the hospital?

18 **A. As I recall, he was, essentially, dead.**

19 **Q.** Do you recall when he arrived, what
20 condition his pupils were, for example?

21 **A. No.**

22 **Q.** And, Doctor, I'm going to show you on
23 Exhibit 378, Bates page 2051, and ask you if a
24 person is brought to the hospital in the condition
25 that Mr. Shore was in, which you said was,

1 essentially, dead when he arrived at the hospital,
2 would that cause pupils to change from, say,
3 pinpoint to a dilated?

4 **A. No. His pupils would stay the same. It**
5 **says asystole on that document, which means no**
6 **heartbeat.**

7 **Q.** Let me ask you this: When a person dies,
8 over the next hour or two, do the pupils change?

9 **A. They can change. You can have rigor**
10 **mortis or stiffening of the muscles after death.**
11 **And your pupils have muscles that make them dilated**
12 **and contract. It's possible to have rigor mortis**
13 **of the cilia area, not full changing of the pupils.**

14 **Q.** Would you expect to see that rigor mortis
15 in the pupils within an hour of death?

16 **A. It's possible.**

17 **Q.** Do you have a way of determining whether
18 the pupils that Mr. Shore presented with at the
19 hospital, which were fixed and dilated, were the
20 way his pupils were prior to death?

21 **A. No. They describe them as that at the**
22 **time of death. I have no difference of opinion.**

23 **Q.** Do you know whether in Mr. Shore's case,
24 the doctor at Verde Valley Medical Center ever
25 documented in the medical records a cause of death

1 for Mr. Shore?

2 **A. As I recall, he did not.**

3 **Q.** When a patient presents at a hospital --
4 who is essentially deceased when they present -- is
5 it common that the doctor would make a
6 determination?

7 **A. Not necessarily.**

8 **Q.** You said not necessarily. Do you know
9 what factors go into making a -- into a doctor
10 deciding whether to make that determination or not?

11 MS. DO: Objection. Foundation, Your Honor.

12 THE COURT: If you can answer that, Doctor,
13 you may.

14 THE WITNESS: Well, for some patients that
15 have well-documented natural disease and are
16 expected to die but that are transported to the
17 hospital and die in the emergency room, in some
18 jurisdictions the emergency doctor will sign the
19 death certificate as the natural disease.

20 In others the person may die in the
21 emergency room, but the attending physician who
22 knows the patient will certify the cause of death.
23 In some places death in the emergency room is
24 reported to the medical examiner's department and
25 jurisdiction may or may not be invoked.

1 Q. BY MR. HUGHES: In this particular case,
2 can you tell us what your opinion is as to the
3 manner of Mr. Shore's death.

4 A. In my opinion, it's an accident.

5 Q. Can you tell us what the different
6 manners are that you have to choose from.

7 A. There is natural, which is exclusively
8 caused by disease; accident, which is due to or in
9 which death is caused by or contributed by an
10 injury without intent to harm.

11 Suicide is, essentially, self-murder with
12 intent to kill one's self. Homicide is death at
13 the hands of another with an intent to harm. And
14 if it cannot be determined, then the manner of
15 death goes undetermined.

16 Q. If a drunk driver were to run over, kill
17 someone in a crosswalk, would you consider that --
18 how would you characterize the manner of that
19 death?

20 A. Well, usually those are accidental,
21 unless the person driving intended to strike the
22 pedestrian and kill them. Then that would make it
23 a homicide.

24 Q. Is your determination of manner of death
25 based at all on the criminal statutes in Arizona?

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1 A. No.

2 Q. What is your opinion as to the cause of
3 death for Mr. Shore?

4 A. In my opinion, the cause of death is heat
5 stroke.

6 Q. And, Doctor, with respect to Mr. Shore,
7 did you also believe that the condition of
8 Mr. Shore's heart had an effect or cause in his
9 death?

10 A. I don't know if it had a -- contributed
11 to his death. It may have or it may not have. I
12 don't know.

13 Q. But for the heat stroke, would the heart
14 condition that you saw for Mr. Shore have killed
15 him on October 8th?

16 A. Probably not.

17 Q. You say "probably not." Do you have any
18 opinion of the likelihood that that heart condition
19 that you saw was of such a nature that it would
20 have killed him on October 8th?

21 A. Well, he could have had a heart attack on
22 October 8th. But in my opinion, the heat caused
23 his death.

24 Q. Can you tell us how you came by that
25 opinion.

1 A. The circumstances, the autopsy, the
2 toxicology results, the microscopical examination,
3 the medical history, background information
4 provided to me, and the other death.

5 Q. You mentioned background history provided
6 to you. Can you tell us what that background
7 history was.

8 A. It was provided by law enforcement at the
9 time of the autopsy and was in general about the
10 ceremonial lodge, how hot it was, people
11 complaining about how hot it was, people getting
12 sick and some being transported to the hospital,
13 and two died.

14 Q. Is that the information that you've
15 recounted that you relied upon from that background
16 information?

17 A. Yes.

18 Q. Do you know whether you attended a
19 briefing here in Prescott at the county attorney's
20 office where there was a discussion about the facts
21 surrounding the case?

22 A. Yes.

23 Q. Do you remember when that briefing was?

24 A. No.

25 Q. Did that briefing influence your decision

40

1 as to the manner or cause of death?

2 A. Yes.

3 Q. Can you tell us how it did.

4 A. As I recall, it was more information
5 about how people became sick, what they saw, how
6 they felt, their descriptions, general overall what
7 happened as well as photographs of the lodge,
8 general staff discussion of all that was known
9 regarding the lodge ceremony.

10 Q. You said a discussion of how people
11 became sick. What do you recall that influenced
12 your decision about how people became sick?

13 A. As I recall, there were people who
14 complained of it being very hot, becoming sick,
15 nauseated, light headed, sweating, feeling faint,
16 maybe passing out. And two people became
17 unconscious.

18 Q. Do you know whether prior to that
19 briefing you had prepared a draft of your autopsy
20 report?

21 A. Yes. I did.

22 Q. And is the -- had you had that draft
23 transcribed?

24 A. As I recall, yes.

25 Q. Showing you page 5 of your report, can

1 you tell us what the significance is of this
2 information on the bottom of page 5 of your report.
3 **A. "REL" are my initials. "OGM" is the**
4 **transcriptionist. And "T" and the date would be**
5 **the date that transcription was typed.**

6 **Q.** And have you been interviewed by the
7 defense in this case?

8 **A. Yes.**

9 **Q.** Do you recall how many times you've been
10 interviewed?

11 **A. Twice.**

12 **Q.** At the first interview was there some
13 discussion between the lawyers as to the legal
14 ability to ask some questions?

15 **A. Yes.**

16 **Q.** And at that time did I ask you not to
17 answer questions about that briefing until we got
18 some direction from the Court?

19 **A. Yes.**

20 **Q.** And then later did we -- did you conduct
21 a second interview with the defense and myself?

22 **A. Yes.**

23 **Q.** At that second interview were you then
24 permitted to talk fully about the briefing at the
25 county attorney's office with the sheriff?

1 **A. Yes.**

2 **Q.** Can you tell us what you tested for in
3 your toxicology testing that is referenced in
4 Mr. Shore's autopsy report.

5 **A. The common medications of abuse, drugs of**
6 **abuse, illicit drugs of abuse, and alcohols were**
7 **tested for.**

8 **Q.** And do you do that testing yourself?

9 **A. No. I obtain the sample and then it's**
10 **submitted to the toxicology lab.**

11 **Q.** And is the lab that does the testing --
12 is that a lab that is commonly relied upon by
13 forensic pathologists?

14 **A. Yes.**

15 **Q.** Do you find their results to be reliable?

16 **A. Yes.**

17 **Q.** The testing for these common drugs which
18 are set forth in the report -- did you find any
19 positive testing?

20 **A. No.**

21 **Q.** Was there some additional testing as far
22 as electrolytes?

23 **A. Yes.**

24 **Q.** And can you tell us who did that testing.

25 **A. The same lab.**

1 **Q.** And we're going to go over those results
2 in a minute. Did you do specific testing for
3 organophosphates?

4 **A. Yes.**

5 **Q.** And with respect to the testing that you
6 had performed at the time of your autopsy, did you
7 do specific testing for organophosphates?

8 **A. No.**

9 **Q.** At the time you prepared your autopsy
10 report, why did you believe it was important or not
11 important to test for organophosphates?

12 **A. There was no information that**
13 **organophosphates may have been involved.**

14 **Q.** Did you see any signs and symptoms in the
15 medical records of Mr. Shore that would lead you to
16 believe that he had been poisoned by an
17 organophosphate?

18 **A. No.**

19 **Q.** Did you see any signs and symptoms in
20 your autopsy of Mr. Shore that would lead you to
21 believe he had been poisoned by an organophosphate?

22 **A. No.**

23 **Q.** Do you have any idea how common it is for
24 a person to die from organophosphate exposure?

25 **A. I don't believe I've had such a person in**

1 **my career.**

2 **Q.** Are you aware of anyone in your career
3 dying from organophosphate exposure?

4 **A. No.**

5 **Q.** Did you prepare a death certificate for
6 Mr. Shore?

7 **A. Yes.**

8 **Q.** Sir, showing you Exhibit 377, can you
9 tell us what that document is.

10 **A. It's a death certificate for Mr. Shore.**

11 **Q.** Is that the certificate you prepared?

12 **A. The certificate is done electronically**
13 **and then printed out by vital statistics office.**

14 **Q.** Is the information in that certificate
15 the information that you supplied?

16 **A. Certain of it is.**

17 **Q.** Can you tell us -- without telling us
18 what the information is, can you tell us the
19 categories of information you provided.

20 **A. The cause and manner of death, whether an**
21 **autopsy was performed, and how the injury occurred.**

22 **Q.** And can you tell us the types of
23 information you did not supply.

24 **A. Social security number, marital status,**
25 **ZIP codes, addresses, spouse.**

1 Q. Does this appear to be a true and correct
2 copy of Mr. Shore's death certificate?

3 A. Yes.

4 MR. HUGHES: Your Honor, state would move for
5 the admission of 377.

6 THE COURT: Ms. Do?

7 MS. DO: No objection.

8 THE COURT: 377 is admitted.

9 (Exhibit 377 admitted.)

10 Q. BY MR. HUGHES: Doctor, did you make a
11 determination as to the cause of death of Kirby
12 Brown?

13 A. Yes.

14 Q. Did you prepare an autopsy report that
15 details your determination of Ms. Brown's cause of
16 death?

17 A. Yes.

18 Q. Did you prepare some of those lab notes,
19 for want of a better word, that you discussed for
20 Mr. Shore for Ms. Brown's case?

21 A. Yes.

22 Q. Showing you Exhibit 370, can you tell me
23 what that document is.

24 A. **It's my autopsy report and a copy of the**
25 **toxicology report.**

1 Q. And showing you Exhibit 371, can you tell
2 me what that document is.

3 A. **The identification tag with initial**
4 **background information, the document showing that I**
5 **amended the cause of death from pending to heart**
6 **stroke, my body diagram, and notes on the organs,**
7 **the document indicating that she was admitted to**
8 **and released from the medical examiner's office.**

9 MR. HUGHES: Your Honor, the state would move
10 the admission of Exhibit 370 and 371.

11 MS. DO: No objections.

12 THE COURT: 370 and 371 are admitted.

13 (Exhibit 370 and 371 admitted.)

14 Q. BY MR. HUGHES: Can you walk us through
15 the process of how you made the determination of
16 Ms. Brown's cause of death.

17 A. **It was a similar process. Initial**
18 **background information, acquiring medical records,**
19 **performing an autopsy, doing toxicology, examining**
20 **her slides under the microscope, and participating**
21 **in the staff meeting, obtaining all the information**
22 **that I could and then taking everything together,**
23 **have an opinion as to the cause and manner of**
24 **death.**

25 Q. And can you tell us, with respect to

1 Ms. Brown, whether there were any significant
2 autopsy findings that influenced your decision as
3 to her cause of death?

4 A. **Yes. Her autopsy was, essentially,**
5 **negative. I did not find any disease or evidence**
6 **of disease or evidence of injury.**

7 Q. And how did that, then, influence your
8 determination?

9 A. **Based on the autopsy, in my opinion, she**
10 **did not die of a natural disease for which I did**
11 **not find or from an injury.**

12 Q. If there had been a natural disease or an
13 injury, would you have expected to find signs of
14 that in the autopsy?

15 A. Yes.

16 Q. With respect to Ms. Brown, do you recall
17 what sort of a haircut she had when she presented?

18 A. **Her hair was one inch long, brown, and**
19 **straight.**

20 Q. Do you recall any other abnormalities
21 that you found in the autopsy that you believed
22 were significant to manner or cause of death?

23 A. **No. In my opinion, she had no**
24 **abnormalities.**

25 Q. Did you also review some medical records

1 of Ms. Brown?

2 A. Yes.

3 Q. Doctor, I'm going to show you
4 Exhibit 373, which are Ms. Brown's Verde Valley
5 Medical Center records, and 374, which is already
6 in evidence, which are her EMS records, and ask if
7 you recognize those documents.

8 A. Yes.

9 Q. Are these the documents that you reviewed
10 in determining or making your determination as to
11 Ms. Brown's cause of death?

12 A. **As I recall, yes.**

13 MR. HUGHES: Your Honor, the state moves
14 Exhibit 373.

15 THE COURT: Counsel?

16 MS. DO: No objection.

17 THE COURT: 373 is admitted.

18 (Exhibit 373 admitted.)

19 Q. BY MR. HUGHES: Doctor, do you recall
20 putting Exhibit 374, which is the EMS report that's
21 already in evidence -- do you recall what condition
22 Ms. Brown was in when she was first seen by the
23 Verde Valley Fire District?

24 A. **She was unconscious, and cardiopulmonary**
25 **resuscitation was being performed.**

1 Q. Do you know what condition Ms. Brown was
2 in when she arrived at the Verde Valley Medical
3 Center?

4 A. Her heartbeat at the scene where
5 emergency medical services were -- she had no
6 heartbeat. And when she arrived at the hospital,
7 she was dead.

8 Q. And, Doctor, do you have an idea of what
9 condition her pupils were when she arrived at the
10 hospital?

11 A. No. Only what's documented.

12 Q. Showing you Exhibit 3473, Bates No. 1649,
13 can you tell me what the hospital documented her
14 pupils as being.

15 A. Dilated and fixed.

16 Q. Do you know whether a doctor at Verde
17 Valley Medical Center ever documented Ms. Brown's
18 cause of death?

19 A. No.

20 Q. Do you know what her condition was when
21 she presented at the hospital?

22 A. Essentially, dead.

23 Q. And, sir, showing you Exhibit 1635, can
24 you review those Verde Valley Medical Center
25 records and let me know if there was a death

1 determination by anyone at the Verde Valley Medical
2 Center?

3 A. Yes. She was pronounced dead there.

4 Q. Did they make a determination as to the
5 cause of death?

6 A. No.

7 Q. Did you reach an opinion as to the manner
8 of Ms. Brown's death?

9 A. Yes.

10 Q. What was that determination?

11 A. Accident.

12 Q. And what were the factors that led you to
13 believe it was an accident?

14 A. There was no intent to cause harm or
15 cause the death of her by restraining her in the
16 heated building.

17 Q. And in making that determination, was
18 your determination of manner of death based at all
19 on the criminal statutes, say, the reckless
20 manslaughter statute?

21 A. No.

22 Q. What was your opinion as to the cause of
23 Ms. Brown's death?

24 A. Heat stroke.

25 Q. Can you tell us what that opinion is

1 based upon.

2 A. As per Mr. Shore, the circumstances,
3 background information, medical history, autopsy
4 findings, toxicology.

5 Q. And can you tell us, with respect to the
6 circumstances, what circumstances you have based
7 your decision upon.

8 A. The same as for Mr. Shore. What I was
9 provided, the staff meeting, medical records,
10 toxicology. All that information was taken into
11 consideration.

12 Q. And can you tell us what circumstances
13 you believed were pertinent or influenced the death
14 of Ms. Brown.

15 A. She was a participant in the ceremonial
16 lodge where it was hot, and people complained of
17 being hot and became sick and were transported to
18 the hospital, and she died.

19 Q. Doctor, with respect to Ms. Brown's
20 autopsy report, which is Exhibit 370, did you -- as
21 with Mr. Shore's autopsy report, did you have a
22 draft transcribed before the meeting with the
23 sheriff's department at the county attorney's
24 office?

25 A. As I recall, yes.

1 Q. Showing you page 5 of that report, can
2 you tell us the date that you would have had that
3 transcribed.

4 A. It was transcribed October 24th, 2009.

5 Q. And can you tell us whether your opinion
6 as to cause of death changed from the time that you
7 prepared that draft that was transcribed?

8 A. At the time the cause and manner were
9 pending. I had some idea as to the cause and
10 manner of death but was awaiting further
11 information, if there was any.

12 Q. And what was the idea you had at that
13 time on October 24th as to manner and cause?

14 A. Heat stroke and accident.

15 Q. And is that what was reflected. Then, in
16 this transcription?

17 A. As I recall, yes.

18 Q. In other words, did page 5 of your
19 autopsy report change at all after the time it was
20 transcribed?

21 A. As I recall, no.

22 Q. And I should ask that same question for
23 Mr. Shore. Did page 5 of his autopsy report change
24 at all after the time it was transcribed?

25 A. As I recall, no.

1 Q. You mentioned that some toxicology tests
2 were done prior to your autopsy report for
3 Mr. Shore. Were autopsy -- were forensic
4 toxicology tests performed prior to your autopsy
5 report in Ms. Brown's case?
6 A. Yes.
7 Q. And can you tell us what those tests were
8 looking for that were performed prior to the
9 autopsy report.
10 A. The same as for Mr. Shore. Medications,
11 medications of abuse, illicit drugs of abuse,
12 alcohols.
13 Q. Did you find any positive results?
14 A. No.
15 Q. Did you also have some enzyme tests done
16 for Ms. Brown?
17 A. No.
18 Q. Did you have any electrolyte tests done?
19 A. Yes.
20 Q. We're going to talk about those for both
21 of the decedents in just a minute. Prior to the
22 preparation of your autopsy report, did you --
23 autopsy report for Ms. Brown -- did you do any
24 testing for organophosphates?
25 A. No.

1 Q. And why is that?
2 A. There was no information that they should
3 be tested for.
4 Q. Did you see any signs and symptoms in
5 your autopsy that would lead you to believe that
6 Ms. Brown had been poisoned by organophosphates?
7 A. No.
8 Q. Did you see any indication in her medical
9 records that would lead you to believe that?
10 A. No.
11 Q. Do you know what the common symptoms or
12 signs would be that you would expect to find in a
13 patient who had died from organophosphate
14 poisoning?
15 A. That would best be described by an
16 emergency room physician. But there is an acronym
17 for salivation, lacrimation, urination, and
18 defecation from overstimulation of the nerves by
19 the organophosphates.
20 Q. In Ms. Brown's EMS report, the report
21 indicates that the fire district was dispatched at
22 1721. Do you see that?
23 A. Yes.
24 Q. And the narrative indicates that a
25 patient was found unresponsive with CPR in

1 progress. Do you see that?
2 A. Yes.
3 Q. And if we assume that the EMS arrived on
4 scene around 1740, can you explain or do you have
5 an opinion as to the documentation that at some
6 point and during the time of transport Ms. Brown
7 began to have blood in her mouth?
8 A. I don't know if it was blood in her
9 mouth. That's what it says. I wasn't there. I
10 don't know that to be blood.
11 Q. If assuming it was blood and assuming
12 that Ms. Brown had 45 minutes or more of CPR being
13 performed, do you have any opinion as to the cause
14 of where that blood could have come from?
15 A. No.
16 Q. In your autopsy of Ms. Brown, did you see
17 any damaged organs or anything that could lead to
18 the blood that was seen or alleged blood that was
19 seen in her mouth?
20 A. No.
21 Q. The fact that the EMS report indicates
22 there was at least a hundred cc's that was
23 suctioned, would that change your opinion as to the
24 cause of Ms. Brown's death?
25 A. No.

1 Q. Can you explain why.
2 A. She's being resuscitated. She's had heat
3 stroke. I don't know that to be blood. Based on
4 my studies, it would not change my opinion.
5 Q. And let's move now to the topic of
6 heat-related illnesses. Can you explain what some
7 of the common heat-related illnesses or
8 heat-related syndromes are.
9 A. Well, there is heat exhaustion, where
10 people are -- become hot. Their body temperature
11 increases. They sweat. They may get dizzy,
12 light-headed; pass out; have nausea, vomiting,
13 diarrhea, rapid heart rate, rapid breathing.
14 If that's left untreated, it may progress
15 to heat stroke, which is a life-threatening
16 condition where the body can no longer compensate
17 for its elevated body temperature. And the person
18 develops central nervous system abnormalities and
19 possibly organ dysfunction resulting in death.
20 Q. And are there a difference or differences
21 between nonexertional heat stroke and exertional
22 heat stroke?
23 A. In the end, when you have heat stroke,
24 it's heat stroke. And how it came about, I have no
25 opinion.

1 Q. Can you tell us what nonexertional heat
2 stroke is compared to exertional.

3 A. **Nonexertional is a person that's in a**
4 **warm environment and becomes increasingly hot and**
5 **develops heat stroke without exercising or vigorous**
6 **activity. It's usually older people or sedentary**
7 **people.**

8 **Exertional heat stroke usually occurs in**
9 **military recruits or athletes or young people who**
10 **are vigorously exercising in a hot environment and**
11 **develop heat stroke.**

12 Q. Are the effects on the body similar or
13 dissimilar between the two?

14 A. **Similar.**

15 Q. And do you know what criteria you use to
16 diagnose whether a patient is suffering from heat
17 stroke?

18 A. **There is different criteria.**

19 Q. What criteria would you look for as a
20 forensic pathologist in determining whether someone
21 has succumbed to heat stroke?

22 A. **The circumstances of death indicating**
23 **that the person is in a hot environment, the**
24 **negative autopsy. Everything else is ruled out or**
25 **eliminated, and you're left with history, medical**

1 **history, circumstances.**

2 Q. Can you tell us whether a temperature of
3 a person could be relevant for your determination
4 of whether a person has succumbed to heat stroke?

5 A. **Yes. A body temperature would be more**
6 **evidence that the person had heat stroke or did**
7 **not.**

8 Q. And can you tell us at what point in the
9 progress from exposure, a patient's exposure to
10 heat, to the time that you see the patient who is
11 deceased -- at what time that temperature would be
12 most relevant to making that determination.

13 A. **At the time of death.**

14 Q. And if a temperature was taken at some
15 time after the time of death, would that be
16 relevant for your determination?

17 A. **It would be useful information.**

18 Q. Can you explain that.

19 A. **If it's -- a temperature is available,**
20 **then I will -- would want to know that.**

21 Q. Can the human body cool down?

22 A. **Yes.**

23 Q. How does the human body -- a healthy
24 human body cool down?

25 A. **In a hot environment, by evaporation.**

1 Q. And would that be sweating?

2 A. **Yes.**

3 Q. And if a person were exposed to a hot
4 environment to the point they suffer from heat
5 stroke and then are removed from that hot
6 environment, could you expect or would you expect
7 that they could begin to cool down if they're
8 placed in a cooler environment?

9 A. **Yes.**

10 Q. And how would they go about cooling down?

11 A. **Their heat from the body would be**
12 **dissipated into the surrounding environment if that**
13 **surrounding environment is cooler than the body.**

14 Q. And do you know -- let's say, assume
15 temperature of surrounding environment is below 70
16 degrees. If a person were in that cooler
17 environment for approximately an hour prior to
18 seeing medical personnel, do you have any idea how
19 quickly or slowly they could cool?

20 A. **No.**

21 Q. Would you expect, though, that they would
22 cool in that environment?

23 A. **Yes.**

24 Q. Can you tell us the signs and symptoms
25 that you might expect to see in a person as they

1 begin to suffer from heat stroke.

2 A. **Well, I'm not that kind of physician.**
3 **But, in general, they become disoriented. They may**
4 **have seizures. They may go unconscious.**

5 Q. And do you have any idea how quickly
6 those symptoms can manifest in a patient?

7 A. **No. It can be fairly rapid or over a**
8 **period of time.**

9 Q. Would factors such as the -- can you tell
10 us what factors might influence how quickly or how
11 slowly the symptoms might manifest in a patient?

12 A. **It depends on the person. Are they**
13 **wearing clothes? Is the environment -- how hot is**
14 **that? How much exposure to the environment do they**
15 **have? Is it humid? not humid? Are they drinking?**
16 **Are they sweating? Are they dehydrated? All those**
17 **factors.**

18 Q. Doctor, do you know how heat stroke would
19 commonly be treated?

20 A. **The body would be cooled. But I'm not an**
21 **emergency room physician.**

22 Q. Do you know whether there are different
23 degrees or levels that a person can exhibit as far
24 heat stroke?

25 A. **I don't understand the question.**

1 Q. That wasn't a good question. Can a
2 person be just a little bit sick or very sick with
3 heat stroke?

4 A. **No. Heat stroke is a life-threatening**
5 **condition. That's a serious condition to be in.**

6 Q. If someone is suffering from heat stroke,
7 could they be conscious but delirious?

8 A. **Yes.**

9 Q. And if someone suffering from heat
10 stroke, could they be unconscious but still able to
11 control their airway?

12 A. **It's possible.**

13 Q. And could someone suffering from heat
14 stroke be unconscious to the point that they were,
15 essentially, comatose?

16 A. **Yes.**

17 Q. Do you know what sort of neurological
18 dysfunction you could expect to see in a person
19 suffering from heat stroke?

20 A. **Only what I've read.**

21 Q. Is that part of your medical studies and
22 education?

23 A. **It's part of medical school and rotating**
24 **through the emergency room. I'm not -- I don't**
25 **treat living or diseased patients in an emergency**

1 **room.**

2 Q. Fair enough. Have you treated living
3 heat stroke patients?

4 A. **Not that I recall.**

5 Q. Let me ask you this: Have you ever
6 performed autopsies on people who you have
7 determined have died from heat stroke?

8 A. **Yes.**

9 Q. And do you have any idea how many
10 autopsies you've performed on people who have died
11 from heat stroke?

12 A. **Well, we have people that cross the**
13 **desert here in Arizona in summer. And, my opinion,**
14 **a lot of those died from heat stroke. So maybe**
15 **three, four per year.**

16 Q. Now, on the autopsies, do you actually or
17 have you performed autopsies on some of the people
18 crossing the desert?

19 A. **Yes.**

20 Q. And in those cases, can you tell us, was
21 there -- did you have the opportunity to perform
22 the autopsy within a relatively close time of
23 death? Or was it -- you know -- days or weeks
24 after the death occurred?

25 A. **Usually within a few days.**

1 Q. And in those particular cases, did you
2 have relatively intact bodies?

3 A. **Yes.**

4 Q. In those cases, then, were you able to
5 perform an autopsy on those bodies to try and
6 assist you in determining cause of death?

7 A. **Yes.**

8 Q. And what would you be looking for in
9 those autopsies?

10 A. **Disease or injury that might explain the**
11 **death.**

12 Q. Other than people who may succumb to the
13 heat crossing the desert, have you performed
14 autopsies on any other persons that you believe
15 died from heat stroke?

16 A. **Yes.**

17 Q. Can you tell us what sort of patients
18 those people -- those would be.

19 A. **Elderly people in a trailer house without**
20 **air conditioning; drug addicts out on the street,**
21 **using methamphetamine or cocaine in the heat.**

22 Q. With respect to the people who, for
23 example, would be in a trailer without air
24 conditioning, do you have any idea approximately
25 how many of those autopsies?

1 A. **Maybe a dozen.**

2 Q. And in those cases, do you have -- do you
3 recall were they, again, relatively intact bodies
4 or were they more skeletal?

5 A. **Sometimes they're intact. Sometimes**
6 **they're decomposing.**

7 Q. In those cases were you able to obtain a
8 temperature at or near death?

9 A. **No.**

10 Q. And without that temperature, how were
11 you able to reach a determination as to cause of
12 death?

13 A. **Circumstances, medical history, ambient**
14 **temperature at the time they're found. How -- are**
15 **they decomposing? Are they freshly dead? When**
16 **were they last seen? Do they have air**
17 **conditioning? Do they have the ability to cool**
18 **themselves? All that information.**

19 Q. And would a negative finding in an
20 autopsy, then, impact your determination in cases
21 where you had a relatively intact body?

22 A. **Yes.**

23 Q. We mentioned earlier -- I mentioned
24 earlier or asked you about some of the enzyme
25 testing or -- excuse me -- electrolyte testing that

1 you performed in the autopsies of Ms. Brown and
2 Mr. Shore.

3 I'm going to show you Exhibit 370. And
4 referring to Bates 1236, can you tell me if that
5 page refers to the electrolyte testing that you
6 performed or had performed.

7 **A. Looks like it. But I can't see the name.**

8 **Q.** Let me go ahead and show you the
9 document. And this is Ms. Brown's autopsy report.

10 **A. Yes.**

11 **Q.** And can you tell me why it is that you
12 had electrolyte testing performed for Ms. Brown?

13 **A. In an effort to determine whether she's**
14 **dehydrated or not. Some people suffer heat stroke.**
15 **It can be in part because they're dehydrated. If**
16 **they're dehydrated, then they're -- certain of**
17 **their electrolytes in their vitreous should**
18 **increase, because the water in the vitreous has**
19 **decreased going to dehydration. I expect elevated**
20 **levels of electrolytes.**

21 **Q.** Do you know whether dehydration is a
22 necessary component of heat stroke?

23 **A. No. It's not.**

24 **Q.** What do you mean by that?

25 **A. You can develop heat stroke even if you**

1 **are hydrated. You need only be in a hot**
2 **environment that your body can no longer compensate**
3 **to keep it cool. Even if you drink, your body may**
4 **still not be able to keep the body at a temperature**
5 **that allows life.**

6 **Q.** If I were to, for example, say, take a
7 healthy person and give them a big bottle of water
8 and put them in a very hot car in Phoenix in July,
9 is it possible they could succumb to heat stroke
10 even though they had water with them?

11 **A. Yes.**

12 **Q.** With respect, then, to Ms. Brown's
13 electrolyte panel, can you tell us in layperson's
14 terms what is depicted or what we can learn from
15 that electrolyte panel.

16 **A. The electrolytes are -- well, sodium and**
17 **chloride are about where you'd expect them in a**
18 **person that's normally hydrated.**

19 **Q.** Do you know whether those electrolyte
20 panels could be affected by I.V.s that were given
21 to the patient from the time EMS arrived to the
22 time they presented at the hospital, assuming they
23 were having CPR performed on them?

24 **A. No. In her case, she's dead. I don't**
25 **expect the fluids that they administered to affect**

1 **her electrolytes.**

2 **Q.** Would the CPR being performed -- would
3 that cause any perfusion of the fluids that were
4 being put into her body by the --

5 **A. It might.**

6 **Q.** And could that perfusion of those fluids
7 affect the electrolytes in any way?

8 **A. I don't think so. Because the**
9 **electrolytes are taken from the fluid inside her**
10 **eyeballs. The fluid would have to get into her**
11 **eyeballs to dilute those electrolytes. And she's**
12 **dead.**

13 **Q.** And how would -- in a healthy person how
14 would the vitreous fluid in your eye -- how is that
15 replenished or how is that affected?

16 **A. It has blood vessels. And the blood**
17 **vessels deliver blood and liquid and nutrients and**
18 **electrolytes to and from the eyeball. The eyeball**
19 **keeps itself in equilibrium with what's in the**
20 **blood.**

21 **Q.** And do you believe, then, that the
22 perfusion from CPR or an auto-pulse CPR would not
23 be sufficient to affect the fluid inside the eye?

24 **A. No. I don't think so.**

25 **Q.** Okay. Turning to Mr. Shore's report,

1 which is Exhibit 375, can you tell us what the
2 electrolytes panel means in sort of layperson's
3 terms.

4 **A. His electrolytes are about what you'd**
5 **expect in a normally hydrated person.**

6 **Q.** And, Doctor, going back, then, to --
7 going back, then, to the questions I'd asked
8 earlier regarding the cooling of a body, can you
9 tell me whether if you place a human body in a cool
10 environment, would pouring water on that body have
11 any effect as to the cooling?

12 **MS. DO:** Objection, Your Honor. Foundation.
13 The witness has already testified this is beyond
14 his experience.

15 **THE COURT:** If you can answer that, Doctor,
16 you may do that.

17 **THE WITNESS:** Well, the body will -- the
18 surface of the body will cool if you put it in a
19 cooler environment and pour water on it.

20 **Q.** **BY MR. HUGHES:** Do you know what happens
21 to the extremities of the body as opposed to the
22 trunk or core of the body? Would you expect to see
23 one or the other cool more quickly?

24 **A. The extremities may cool more quickly or**
25 **the whole body may cool at the same rate.**

1 Q. And can you explain why the extremities
2 might cool more quickly?

3 A. If they're small and have less mass and
4 have less heat, maybe they dissipate the heat
5 faster than the torso, which, if warm deep down in
6 the core, may continue to radiate heat or conduct
7 heat to the surface of the body and appear to cool
8 down slower.

9 Q. Do you know how the extremities dilate or
10 how the blood flow is affected when a person is
11 being cooled?

12 A. Well, if they're hot, usually their blood
13 vessels dilate on the surface of the skin. And
14 that's how the body cools itself, by dilating blood
15 vessels on the skin. And the heat dissipates to
16 the skin and transferred to the environment.

17 If you pour cool water or cool the
18 extremities with a dilated vessel, it should cool
19 the blood in that extremity. As that blood goes
20 back into the body, it should cool the body down.

21 MR. HUGHES: Your Honor, would this be a good
22 place to take a break?

23 THE COURT: We can do that. Thank you,
24 Mr. Hughes.

25 Ladies and gentlemen, we will take the

1 morning recess. Please be reassembled at five
2 till. That's 15 minutes. We'll start as soon as
3 we can after that.

4 I just want to remind Dr. Lyon that the
5 rule of exclusion of witnesses has been invoked.
6 You cannot communicate about the case with any
7 other witness until it's over.

8 Thank you. We are in recess.

9 (Recess.)

10 THE COURT: The record will show the presence
11 of the defendant, Mr. Ray; the attorneys, the jury.
12 Dr. Lyon has returned to the witness stand.

13 Mr. Hughes?

14 MR. HUGHES: Thank you.

15 Q. Doctor, we were talking about Ms. Brown.
16 Did you eventually contribute to a death
17 certificate for Ms. Brown?

18 A. Yes.

19 Q. And did you contribute the same sort of
20 information in her death certificate that you told
21 us about for Mr. Shore?

22 A. Yes.

23 Q. Showing you what's marked as Exhibit 372,
24 do you recognize that document?

25 A. Yes.

1 Q. What is 372?

2 A. It's a death certificate for Kirby Brown,
3 giving the cause and manner of death and my name.

4 Q. Is that the information that you had
5 contributed to it?

6 A. Yes.

7 MR. HUGHES: Your Honor, state moves the
8 admission of Exhibit 372.

9 THE COURT: Ms. Do?

10 MS. DO: No objection.

11 THE COURT: 372 is admitted.

12 (Exhibit 372 admitted.)

13 Q. BY MR. HUGHES: Doctor, at some point
14 after the time the autopsy reports were prepared,
15 did you then do a test for organophosphates?

16 A. A test was requested and done.

17 Q. Do you remember when that occurred?

18 A. Not too long ago.

19 Q. Do you remember who made the request?

20 A. As I recall -- well. No I don't
21 remember.

22 Q. Do you know whether -- you said it was
23 done not too long ago. Do you know whether the
24 results -- first of all, do you know what the
25 results of that test were?

1 A. As I recall, they were negative.

2 Q. Do you know whether those results are
3 reliable, given the passage of time from October
4 of 2009 until recently?

5 A. No.

6 Q. During the autopsy that you performed on
7 Ms. Brown, did you note any signs or symptoms or
8 anything you would expect to observe in the case of
9 poisoning?

10 A. No.

11 Q. Are you familiar with common signs and
12 symptoms for rat poisoning?

13 A. Based on what I've read.

14 Q. And is that reading in connection with
15 your profession?

16 A. Yes.

17 Q. Have you ever actually seen a patient to
18 die from rat poisoning?

19 A. No.

20 Q. What would be -- based on your training,
21 then, what would be the signs that you would expect
22 to see?

23 A. It depends on the poison. Some common
24 poison is so-called superwarfarin, which prevents
25 blood factors from being produced such that the

1 **animal slowly bleeds to death internally.**

2 **Q.** You said slowly bleeds to death. Do you
3 know how long it takes for that to occur?

4 **A. No. Probably depends on how much was**
5 **ingested.**

6 **Q.** And if a person was bleeding to death
7 internally, would you expect to see signs of that
8 in your autopsy?

9 **A. Yes.**

10 **Q.** I had asked early on if you had actually
11 performed the autopsy on Ms. Neuman. You indicated
12 that occurred in Flagstaff. Do you know or did you
13 have an opportunity to review her autopsy report?

14 **A. No.**

15 **Q.** Did you have an opportunity to talk to
16 the medical examiner who performed her autopsy?

17 **A. Yes.**

18 **Q.** Did you review any medical records
19 pertaining to Ms. Neuman?

20 **MS. DO:** Objection, Your Honor. Foundation as
21 to time, please.

22 **THE COURT:** As to time, Mr. Hughes.

23 **Q.** **BY MR. HUGHES:** Did you ever review any
24 medical records?

25 **A. I may have reviewed her record as part of**

1 **the other medical records that I review.**

2 **Q.** And when was that review?

3 **A. Quite a while ago.**

4 **Q.** By "quite a while ago," are you referring
5 to around the time of the autopsy?

6 **A. No. As I recall, I was provided medical**
7 **records on the patient that became ill and were**
8 **transported to the hospital, and that I reviewed**
9 **those.**

10 **Q.** Do you have any idea what month that was?

11 **A. No.**

12 **Q.** Do you know who provided those records to
13 you?

14 **A. No.**

15 **Q.** And do you recall in particular any
16 particular patients' records that you did review?

17 **A. Mr. Brown and Miss Kirby -- or Kirby**
18 **Brown and James Shore's records.**

19 **Q.** Other than Ms. Brown and Mr. Shore's
20 records, do you recall reviewing any other medical
21 records?

22 **A. I reviewed other medical records, but I**
23 **don't recall the specifics.**

24 **Q.** I have a question for you regarding the
25 determination for cause of death of Mr. Shore. Was

1 it your opinion that Mr. Shore suffered a heart
2 attack?

3 **A. He may have. But in my opinion, he would**
4 **not have had a heart attack, if he did have a heart**
5 **attack, had he not been exposed to the heat.**

6 **Q.** Thank you, Doctor.

7 I don't believe I have any other
8 questions.

9 **THE COURT:** Thank you, Mr. Hughes.
10 Ms. Do?

11 **MS. DO:** Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 **BY MS. DO:**

14 **Q.** Good morning, Doctor.

15 **A. Good morning.**

16 **Q.** Dr. Lyon, my name is Truc Do. You and I
17 actually met before; correct?

18 **A. Correct.**

19 **Q.** That would have been June 17th, 2010, I
20 believe.

21 **A. I don't know. But we have met before at**
22 **a meeting to discuss these deaths.**

23 **Q.** Correct. And that was in Phoenix at your
24 office?

25 **A. Correct.**

1 **Q.** And Mr. Li was with me?

2 **A. Yes.**

3 **Q.** And on that date Mr. Hughes and
4 Detective Diskin were also present?

5 **A. Yes.**

6 **Q.** And do you recall that particular
7 interview being tape recorded by both sides?

8 **A. No.**

9 **Q.** Have you had a chance to review the
10 transcript of that interview at all?

11 **A. No.**

12 **Q.** Let me start, Dr. Lyon, by reviewing some
13 of your education, training, and experience with
14 you. All right?

15 **A. Okay.**

16 **Q.** You indicated to the jury that you are a
17 forensic pathologist; correct?

18 **A. Correct.**

19 **Q.** And a forensic pathologist examines the
20 internal and external parts of the body to
21 determine cause and manner of death?

22 **A. Correct.**

23 **Q.** You trained at a medical school in Kansas
24 City, Missouri?

25 **A. Correct.**

1 Q. After that you completed a residency or
 2 fellowship in forensic pathology; correct?
 3 A. **Correct.**
 4 Q. I understand you've been a medical
 5 examiner now for 11 years.
 6 A. **About.**
 7 Q. And about four years of that was in
 8 Texas?
 9 A. **Correct.**
 10 Q. And so six years in Maricopa County?
 11 A. **About six years. Correct.**
 12 Q. Let me try and understand the
 13 relationship of your position to these two
 14 counties, both Maricopa and Yavapai. Okay?
 15 A. **Okay.**
 16 Q. You are full-time employed by Maricopa
 17 County in the medical examiner's office there?
 18 A. **Correct.**
 19 Q. And you have been so for about six years
 20 now?
 21 A. **Correct.**
 22 Q. You on an independent contract, I
 23 believe, work for Yavapai County. Is that correct?
 24 A. **Correct.**
 25 Q. And that's been for about a year and a

1 half?
 2 A. **Correct.**
 3 Q. So that would be separate and apart from
 4 your employment within Maricopa County?
 5 A. **Correct.**
 6 Q. Within Maricopa County, I understand that
 7 the chief medical examiner there is a doctor named
 8 Dr. Mark Fischione. Correct?
 9 A. **Yes.**
 10 Q. He's your boss there?
 11 A. **Correct.**
 12 Q. And on the day that Mr. Li and I met with
 13 you in Phoenix in June of 2010, we also met with
 14 Dr. Fischione; correct?
 15 A. **Correct.**
 16 Q. In Yavapai County you contract on an
 17 independent basis. Do you also know whether or not
 18 your boss in Maricopa is the chief medical examiner
 19 here in Yavapai?
 20 A. **He's, in effect, the chief. Whether he**
 21 **has that title, I don't know.**
 22 Q. Do you know whether or not
 23 Dr. Mark Fischione also has an independent contract
 24 to work for Yavapai County in the medical
 25 examiner's office?

1 A. **Yes.**
 2 Q. And his independent contract gives him
 3 the title of Chief Medical Examiner of Yavapai
 4 County?
 5 A. **Okay.**
 6 Q. Is that correct?
 7 A. **I don't know.**
 8 Q. Okay. But let me ask you this: Is he
 9 also your boss within Yavapai County?
 10 A. **No. He's the go-to person, so to speak.**
 11 Q. Who would be your immediate supervisor?
 12 A. **We're -- all three, essentially,**
 13 **supervise ourselves. And he's our liaison with the**
 14 **county.**
 15 Q. Understood. Within the year and a half
 16 that you have independently contracted with Yavapai
 17 County, can you tell this jury approximately how
 18 many times a month or year that you were called up
 19 to this county to conduct autopsies.
 20 A. **On average I would say I come up about**
 21 **once a week.**
 22 Q. All right. And other than you and
 23 Dr. Fischione from Maricopa, who else contracts
 24 with the county?
 25 A. **Dr. Stano.**

1 Q. And so you mentioned three earlier from
 2 Maricopa that contract with Yavapai. Are those the
 3 three?
 4 A. **Yes.**
 5 Q. And do you go here on a rotating basis?
 6 A. **Yes.**
 7 Q. All right. Now, I understand that you
 8 are a forensic pathologist and you're board
 9 certified in anatomic and clinical pathology.
 10 Correct?
 11 A. **Correct.**
 12 Q. You told this jury a couple times in
 13 answering Mr. Hughes' questions that you are not a
 14 treating physician; correct?
 15 A. **Correct.**
 16 Q. And by that, what you mean to tell the
 17 jury is that you do not actually treat live
 18 patients?
 19 A. **Correct.**
 20 Q. In the 11 years you've been a physician,
 21 you've never treated a live patient; correct?
 22 A. **Correct.**
 23 Q. You also, in answering Mr. Hughes'
 24 questions about heat stroke, heat illnesses,
 25 organophosphates, indicated to the jury that you're

1 not that kind of physician; correct?
 2 **A. I don't treat live patients with those**
 3 **conditions.**
 4 **Q.** Okay. So let me spend a little bit of
 5 time with you on this. There is a field of
 6 medicine called "emergency medicine"; correct?
 7 **A. Correct.**
 8 **Q.** And within the field of emergency
 9 medicine, doctors trained and certified in that
 10 field would deal with live patients who come in
 11 with heat stroke; correct?
 12 **A. Correct.**
 13 **Q.** Other types of heat illnesses?
 14 **A. Yes.**
 15 **Q.** Environmental exposure to toxins and
 16 poisons?
 17 **A. Yes.**
 18 **Q.** And you've indicated to the jury that you
 19 neither treat live patients nor do you have any
 20 specialization in that particular field of
 21 medicine; correct?
 22 **A. Correct.**
 23 **Q.** There are -- to your knowledge, is there
 24 not -- that's a poorly phrased question.
 25 Do you know whether or not there are

1 forensic pathologists who, in addition to being
 2 certified at looking at deceased people, have also
 3 had experience in treating live patients?
 4 **A. Yes.**
 5 **Q.** There are doctors out there who have
 6 spent some time treating live patients; correct?
 7 **A. Correct.**
 8 **Q.** Who then go back to school and train in
 9 forensic pathology?
 10 **A. Correct.**
 11 **Q.** And then come out and are certified not
 12 only in forensic pathology but also certified, for
 13 example, in emergency medicine?
 14 **A. Correct.**
 15 **Q.** So that particular doctor, that
 16 particular forensic pathologist, would not only
 17 have the expertise of what you would expect to find
 18 in deceased people but also what you would expect
 19 to find in live patients?
 20 **A. Correct.**
 21 **Q.** So in some ways, that particular forensic
 22 pathologist with that extra training, that extra
 23 experience, would have a little bit more knowledge
 24 in terms of what you might expect to see in a live
 25 person suffering from heat stroke?

1 **A. Correct.**
 2 **Q.** Or what you might expect to see in
 3 someone suffering from a toxic poison?
 4 **A. Correct.**
 5 **Q.** You indicated, then, that you are not
 6 really an expert in understanding how a live person
 7 would cool down if they were suffering from heat
 8 illness or heat exhaustion; correct?
 9 **A. Correct.**
 10 **Q.** I understand you're doing your best today
 11 to give this jury your best and complete answer.
 12 But when you answered those questions about the
 13 body cooling down, you're doing that to the best of
 14 your ability; correct?
 15 **A. Correct.**
 16 **Q.** But you can't tell this jury whether or
 17 not you're 100 percent certain of the accuracy of
 18 that information because it's just not your field?
 19 **A. Correct.**
 20 **Q.** That would also be true, Dr. Lyon, in
 21 answering Mr. Hughes' questions about the signs and
 22 symptoms of heat stroke in the live patient;
 23 correct?
 24 **A. Correct.**
 25 **Q.** You can't tell this jury that you are

1 100 percent certain in the accuracy of the
 2 information on that?
 3 **A. Correct.**
 4 **Q.** And that's because, since you haven't
 5 treated live patients, your information comes
 6 from what you've read, perhaps in medical school?
 7 **A. Correct.**
 8 **Q.** All right. Thank you, sir.
 9 You indicated that you do have experience
 10 in examining people who have died of suspected heat
 11 stroke?
 12 **A. Correct.**
 13 **Q.** And you talked about three categories.
 14 Let me go through that. Three categories of
 15 circumstances. One would include folks who are, as
 16 you described it, crossing the desert; correct?
 17 **A. Correct.**
 18 **Q.** And I kind of assumed from the
 19 circumstances that those might involve, for
 20 example, undocumented folks coming over the border.
 21 Is that correct?
 22 **A. Correct.**
 23 **Q.** And you told Mr. Hughes that in those
 24 instances you would normally find the deceased
 25 person out in the desert?

- 1 **A. Correct.**
 2 **Q.** Where you would expect it to be hot?
 3 **A. Correct.**
 4 **Q.** And in examining those bodies, a lot of
 5 times they would come to you within a few days of
 6 having been out in the desert?
 7 **A. Correct.**
 8 **Q.** So when you determine heat stroke, you
 9 make that finding based upon a circumstantial
 10 review of the death; correct?
 11 **A. Correct.**
 12 **Q.** And on top of that, you rule out any
 13 other causes of deaths?
 14 **A. Correct.**
 15 **Q.** Meaning the person didn't die of a heart
 16 attack?
 17 **A. Correct.**
 18 **Q.** Or died at the hands of another,
 19 suffering from a gunshot wound?
 20 **A. Correct.**
 21 **Q.** But it's essential to your findings in
 22 those cases that you've ruled out other causes of
 23 death?
 24 **A. Correct.**
 25 **Q.** Same thing. You talked about finding

- 1 elderly folks in trailers without air conditioning?
 2 **A. Correct.**
 3 **Q.** Those cases also would involve you coming
 4 in to contact with the decedents perhaps a few days
 5 after they passed?
 6 **A. Correct.**
 7 **Q.** And, again, without -- as Mr. Hughes
 8 asked you, a recorded body temperature and findings
 9 in your autopsy, you're making the determination of
 10 heat stroke after ruling out other causes of death?
 11 **A. Correct.**
 12 **Q.** And that would be true also for the drug
 13 addicts that you find on the street?
 14 **A. Correct.**
 15 **Q.** And with respect to the drug addicts on
 16 the street, there are a number of drugs that do
 17 cause hyperthermia, elevated body temperature;
 18 correct?
 19 **A. Yes.**
 20 **Q.** Like methamphetamine?
 21 **A. Correct.**
 22 **Q.** Cocaine?
 23 **A. Correct.**
 24 **Q.** MDMA, which is ecstasy?
 25 **A. Correct.**

- 1 **Q.** And in those instances, you would have to
 2 run a toxicological screen to determine whether or
 3 not that person had that illicit drug in their
 4 blood?
 5 **A. Correct.**
 6 **Q.** Upon finding that, that's how you rule in
 7 heat stroke drug induced; correct?
 8 **A. Correct.**
 9 **Q.** Let me spend a little bit of time with
 10 you in understanding and helping the jury to
 11 understand what the scope of your powers are as a
 12 medical examiner. All right.
 13 **A. Yes.**
 14 **Q.** You work in the Maricopa County full
 15 time. When you do cases up in Yavapai, Dr. Lyon,
 16 do you have access to the resources in Maricopa
 17 County?
 18 **A. Do I use Maricopa County personnel to --**
 19 **Q.** I'm sorry. Let me state that question
 20 better for you. I understand in Maricopa County
 21 you have a state-of-the-art forensic science
 22 center.
 23 **A. Correct.**
 24 **Q.** And that forensic science center has a
 25 number of resources and facilities where you can

- 1 run whatever test you need to run?
 2 **A. Correct.**
 3 **Q.** And my question is, are you able to use
 4 that facility when you work on Yavapai County
 5 cases?
 6 **A. No.**
 7 **Q.** All right. Your duties as a medical
 8 examiner is to investigate all deaths that occur in
 9 the county that you're working for?
 10 **A. Correct.**
 11 **Q.** And those that you rule in to be natural
 12 diseases do not go any further; correct?
 13 **A. Correct.**
 14 **Q.** If they're not natural diseases, then you
 15 go further and you work with, perhaps, the county
 16 attorney and law enforcement and whatever
 17 investigation?
 18 **A. Correct.**
 19 **Q.** You talked to the jury about two things
 20 that you do as a medical examiner. One is
 21 determining cause of death?
 22 **A. Correct.**
 23 **Q.** The other is manner of death?
 24 **A. Correct.**
 25 **Q.** And cause of death is simply your

1 determination what physically or what medically
 2 killed the person; correct?
 3 **A. Correct.**
 4 **Q.** Manner of death is simply how they died.
 5 For example, whether it's an accident or whether it
 6 was a homicide in a shooting case?
 7 **A. Correct.**
 8 **Q.** And in this particular case, after you
 9 conducted your investigation, you ruled that this
 10 case was an accident?
 11 **A. Correct.**
 12 **Q.** And by that, what you mean is that Kirby
 13 Brown and James Shore did not, under your
 14 classification, die at the hands of another?
 15 **A. Well, correct.**
 16 **Q.** And adding to that, it's also including
 17 the fact that you do not find intent?
 18 **A. Correct.**
 19 **Q.** As you told Mr. Hughes -- and I want the
 20 jury to understand -- that your determination as to
 21 manner of death is not binding on the jury;
 22 correct?
 23 **A. Correct.**
 24 **Q.** So that's what you meant when you told
 25 Mr. Hughes that you're not making a legal

1 determination of responsibility?
 2 **A. Correct.**
 3 **Q.** So, likewise, when you determine cause of
 4 death, the jury does not have to -- let me rephrase
 5 that.
 6 When you determine cause of death, your
 7 determination is not binding on the jury?
 8 **A. Correct.**
 9 **Q.** The jury has their duty to look at all
 10 the facts and the evidence and determine whether or
 11 not this is, in fact, the cause of death in this
 12 case; correct?
 13 **A. Correct.**
 14 **Q.** When you discharge your duties, Dr. Lyon,
 15 you do so independently?
 16 **A. I don't understand that question.**
 17 **Q.** Under Arizona law, a medical examiner is
 18 considered to be an independent agent; correct?
 19 **A. Correct.**
 20 **Q.** Meaning you serve the citizens?
 21 **A. Correct.**
 22 **Q.** And you're charged with a very important
 23 duty. And that is to determine what kills people?
 24 **A. Correct.**
 25 **Q.** And it's important that you do so

1 objectively?
 2 **A. Correct.**
 3 **Q.** And independently?
 4 **A. Correct.**
 5 **Q.** So that means you're not an agent of
 6 Ms. Polk's office; correct?
 7 **A. Correct.**
 8 **Q.** You're not an agent of Ms. Polk or
 9 Mr. Hughes?
 10 **A. Correct.**
 11 **Q.** That means you're not an agent of
 12 Detective Diskin's office?
 13 **A. Correct.**
 14 **Q.** Not an agent of Detective Diskin himself?
 15 **A. Correct.**
 16 **Q.** That means you do what you believe is
 17 right and you're not doing what they tell you to
 18 do; correct?
 19 **A. Correct.**
 20 **Q.** As a medical examiner, you told the jury
 21 that you have subpoena powers?
 22 **A. Correct.**
 23 **Q.** And what that means is that you have
 24 independent power to actually go out to various
 25 agencies, hospitals, what have you, and get

1 records; correct?
 2 **A. Correct.**
 3 **Q.** You don't need to go to court for that?
 4 **A. No.**
 5 **Q.** You don't need to go to Ms. Polk?
 6 **A. No.**
 7 **Q.** That's because you, under the statutes of
 8 Arizona, are independent?
 9 **A. Correct.**
 10 **Q.** As an example, if you wanted to get
 11 medical records, you could just issue a subpoena
 12 and get them?
 13 **A. Correct.**
 14 **Q.** If you wanted somebody's medical history,
 15 you could issue a subpoena and get them?
 16 **A. Correct.**
 17 **Q.** You also -- within your office you have a
 18 medical investigator; correct?
 19 **A. Correct.**
 20 **Q.** Those investigators are folks who you can
 21 discharge, deploy, and go out and do additional
 22 investigation if you need it?
 23 **A. Correct.**
 24 **Q.** They can go to the scene of a crime?
 25 **A. There's a staffing issue. But yes.**

1 Q. Understaffed?
 2 A. **Correct.**
 3 Q. But you have the ability and the power to
 4 send an investigator out to the scene of an
 5 accident or scene of a crime?
 6 A. **Correct.**
 7 Q. And that investigator can investigate
 8 whatever facts, whatever circumstances, you think
 9 is important; correct?
 10 A. **Correct.**
 11 Q. And you can do that without having to
 12 check with Detective Diskin?
 13 A. **Correct.**
 14 Q. You also -- within your office you have
 15 labs; correct? Or perhaps not. Does Yavapai
 16 County Medical Examiner have labs to run for tox
 17 screens?
 18 A. **No.**
 19 Q. But you have the ability to send out
 20 whatever you want to national labs?
 21 A. **Correct.**
 22 Q. Because Yavapai County -- and I think
 23 Maricopa County might as well -- you have contracts
 24 with nationally renowned labs; correct?
 25 A. **Correct.**

1 Q. And one of the labs that you work with is
 2 a lab called "AIT"?
 3 A. **Correct.**
 4 Q. That's in Indiana?
 5 A. **Yes.**
 6 Q. A state-of-the-art facility?
 7 A. **To my knowledge.**
 8 Q. Pretty big lab with a lot of resources
 9 and you can run whatever test you want?
 10 A. **Essentially correct.**
 11 Q. And as a medical examiner, in addition to
 12 getting whatever records you want, doing any
 13 additional investigation you need, you could also
 14 run any test that you need to do?
 15 A. **Correct.**
 16 Q. Or want to do; correct?
 17 A. **Correct.**
 18 Q. What I would like to try and do with you
 19 now is go through the timeline of your
 20 investigation into the cause of death for Kirby
 21 Brown and James Shore.
 22 A. **Okay.**
 23 Q. And to do that, I'm going to use the
 24 easel. We're going to start with October 8th,
 25 2009. And that would be the date of the incident;

1 correct?
 2 A. **Correct.**
 3 Q. You were then notified, I believe, on
 4 October 09 of the deaths; correct?
 5 A. **As I recall, that's correct.**
 6 Q. Now, you were notified by
 7 Dr. Mark Fischione; correct?
 8 A. **As I recall, that's correct.**
 9 Q. And he told you that two deaths had
 10 occurred at Angel Valley in connection to a sweat
 11 lodge on October 8th, 2009?
 12 A. **As I recall, that's correct.**
 13 Q. And you were notified the morning of the
 14 9th?
 15 A. **Yes. I believe that's true.**
 16 Q. And you and Dr. Fischione then drove from
 17 Phoenix up to Yavapai?
 18 A. **Yes.**
 19 Q. And on that date is when you conducted
 20 the autopsy; correct?
 21 A. **Correct.**
 22 Q. You conducted the autopsy of James Shore
 23 first, I believe, at 3:05 p.m.?
 24 A. **Correct.**
 25 Q. And then you conducted the autopsy of

1 Kirby Brown subsequent to that at 4:00 p.m.;
 2 correct?
 3 A. **Correct.**
 4 Q. I know Dr. Fischione drove up with you.
 5 But is it true that you conducted the autopsy of
 6 both of these individuals solely on your own?
 7 A. **Correct.**
 8 Q. And by that I mean Dr. Fischione did not
 9 assist?
 10 A. **Correct.**
 11 Q. Do you recall who, if anyone, from the
 12 sheriff's office was present during that autopsy?
 13 A. **As I recall, the detective was present.**
 14 **Others were present, but I don't recall who they**
 15 **were.**
 16 Q. Okay. That would be Detective Diskin;
 17 correct?
 18 A. **Yes.**
 19 Q. Detective Diskin was there during your
 20 autopsies, so he was available to you if you had
 21 any questions about the circumstances of the scene;
 22 correct?
 23 A. **Correct.**
 24 Q. So anything you needed to know about what
 25 happened on October 8th at the scene, you could

1 have turned to Detective Diskin and asked him?
 2 **A. Yes.**
 3 **Q.** And he was also there available to give
 4 you information that he thought would be important;
 5 correct?
 6 **A. Correct.**
 7 **Q.** Would that have been a primary source for
 8 you of what you called "the initial background"?
 9 **A. Yes.**
 10 **Q.** So Detective Diskin one day after the
 11 accident occurs is available to you to give you
 12 whatever background information you needed;
 13 correct?
 14 **A. Correct.**
 15 **Q.** And you, in fact, did ask
 16 Detective Diskin questions about the scene; is that
 17 correct?
 18 **A. I'm sure I did.**
 19 **Q.** Did you ask questions about who found the
 20 decedents?
 21 **A. As I recall, I did.**
 22 **Q.** Did you ask questions like were they
 23 thought to be deceased at the scene?
 24 **A. Probably.**
 25 **Q.** Did you ask questions like were they

1 taken to the hospital?
 2 **A. Yes.**
 3 **Q.** You also asked questions of how many
 4 other people got sick; correct?
 5 **A. Correct.**
 6 **Q.** And that was something you've indicated
 7 to us was important for you to know?
 8 **A. Correct.**
 9 **Q.** Even after you conducted your autopsy on
 10 October 9th, you knew who to go to if you needed
 11 additional information; correct?
 12 **A. Correct.**
 13 **Q.** You can pick up the phone and call
 14 Detective Diskin?
 15 **A. Correct.**
 16 **Q.** I'm going to talk to you really quickly.
 17 We'll come back to this timeline.
 18 The autopsies that you conducted for
 19 James Shore and Kirby Brown -- you called them
 20 "negative." Do you remember that?
 21 **A. Yes.**
 22 **Q.** Okay. Let's explain that to the jury.
 23 When you say a "negative autopsy," what do you
 24 mean?
 25 **A. I mean, essentially, it was a normal**

1 **body. There wasn't any obvious disease or injury.**
 2 **Q.** So let's explain that a little bit
 3 further. When you conduct an autopsy, you're doing
 4 an internal examination; correct?
 5 **A. Correct.**
 6 **Q.** You're looking at the organs?
 7 **A. Correct.**
 8 **Q.** You're looking at tissue?
 9 **A. Correct.**
 10 **Q.** You're looking at the brain?
 11 **A. Correct.**
 12 **Q.** And for heat stroke, Dr. Lyon, there is
 13 nothing that you're going to see during your
 14 autopsy that will tell you positively this is heat
 15 stroke?
 16 **A. Correct.**
 17 **Q.** So you can't look at an organ and see
 18 something there that's going to tell you this
 19 person died of heat stroke?
 20 **A. Correct.**
 21 **Q.** That's what you mean when you say the
 22 autopsies for James Shore and Kirby brown were
 23 negative?
 24 **A. James Shore had some heart decease.**
 25 **Other than that, it was, essentially, a negative**

1 **autopsy. And that's what I mean.**
 2 **Q.** We'll talk about that a little bit more.
 3 So because the autopsies were negative in terms of
 4 your findings on October 9th when you conducted the
 5 autopsy, you had no conclusions yet; correct?
 6 **A. Correct.**
 7 **Q.** In addition to doing external and
 8 internal examination, you also sent out samples for
 9 testing; correct?
 10 **A. Correct.**
 11 **Q.** And during the autopsies of both
 12 individuals, you took blood samples?
 13 **A. Correct.**
 14 **Q.** And you took what's been referred to as a
 15 "vitreous fluid," which is from the eyeball?
 16 **A. Correct.**
 17 **Q.** That was important because you wanted to
 18 run certain toxicology screens?
 19 **A. Correct.**
 20 **Q.** You sent out, I believe, the blood sample
 21 and the vitreous sample --
 22 **A. Correct.**
 23 **Q.** -- for testing. And you did that on
 24 October 13th; correct?
 25 **A. As I recall, yes.**

1 Q. And then the -- I'm sorry. Let me
 2 restate that. I believe on October 13th, 2009, you
 3 directed a forensic technician to send it out.
 4 Correct?
 5 A. **Correct.**
 6 Q. And then that was done the very next day
 7 on October 14th, 2009; correct?
 8 A. **As I recall, yes.**
 9 Q. Do you recall the name of the forensic
 10 technician that you used?
 11 A. **As I recall, Joseph Lopez.**
 12 Q. Let me show you the -- when you do that,
 13 Dr. Lyon, is a form filled out?
 14 A. **Yes.**
 15 Q. And who completes that form?
 16 A. **The individual actually packaging and**
 17 **sending the specimen.**
 18 Q. I'm going to show you Exhibit 371. And I
 19 refer you to the Bates stamp. This one is not
 20 Bates stamped. That form at the top says, forensic
 21 toxicology analysis request form; correct?
 22 A. **Correct.**
 23 Q. That's with regards to Kirby Brown?
 24 A. **Correct.**
 25 Q. I'll show you 376. That's the same form

1 for James Shore; is that correct?
 2 A. **Correct.**
 3 Q. Do you recall whether or not Mr. Hughes
 4 showed you that -- those two documents under direct
 5 examination?
 6 A. **Yes. He did.**
 7 Q. Are you sure?
 8 A. **Yes.**
 9 Q. Okay. Let's take a look at it, then.
 10 We're looking at Exhibit 371 for Kirby Brown. And
 11 I'm going to go to the page that I directed you to.
 12 Okay. Is this the form that was filled out by
 13 Joseph Lopez?
 14 A. **Yes.**
 15 Q. And that's your forensic technician;
 16 correct?
 17 A. **Correct.**
 18 Q. One of the many resources you have at
 19 your disposal?
 20 A. **Correct.**
 21 Q. Telling a technician to send out whatever
 22 you wanted to test?
 23 A. **Correct.**
 24 Q. On October 13th you ask him to send out
 25 the blood and the vitreous for Kirby Brown;

1 correct?
 2 A. **Correct.**
 3 Q. The test was to see if there were any
 4 illicit drugs in her system?
 5 A. **In part.**
 6 Q. What's the other part?
 7 A. **Medications, medications of abuse,**
 8 **alcohols.**
 9 Q. So you're trying to eliminate alcohol?
 10 A. **Correct.**
 11 Q. You're trying to eliminate
 12 over-the-counter drugs that might be abused?
 13 A. **Correct.**
 14 Q. Even prescription drugs?
 15 A. **Correct.**
 16 Q. And then illegal drugs like
 17 methamphetamine, cocaine, barbiturates?
 18 A. **Correct.**
 19 Q. That came back negative?
 20 A. **Correct.**
 21 Q. The other thing you wanted to test for
 22 was the vitreous; correct?
 23 A. **Correct.**
 24 Q. When you directed Joseph Lopez to send
 25 out the vitreous, did you tell him anything with

1 regards to how to fill out this form?
 2 A. **No.**
 3 Q. I direct your attention, then, to this
 4 sentence that was written on this form. Vitreous
 5 is very important in this case, with "very
 6 important" double underscored.
 7 Do you see that?
 8 A. **Yes.**
 9 Q. Do you believe Mr. Hughes showed you this
 10 under direct?
 11 A. **Yes.**
 12 Q. Did you write that sentence?
 13 A. **No.**
 14 Q. Did Mr. Lopez write it?
 15 A. **Presumably.**
 16 Q. And obviously Mr. Lopez is not conducting
 17 the death investigation; correct?
 18 A. **Correct.**
 19 Q. He's doing what you tell him to do?
 20 A. **Correct.**
 21 Q. And you told him to send out the vitreous
 22 fluid; correct?
 23 A. **Correct.**
 24 Q. That was to test for dehydration?
 25 A. **Correct.**

1 **Q.** The sentence, "Vitreous is very important
2 in this case," because you wanted to see if there
3 was evidence of dehydration?
4 **A. Correct.**
5 **Q.** So when this was sent out on October 13th
6 or you asked Mr. Lopez to send it out on
7 October 13th, you believed that dehydration
8 vitreous testing is very important; correct?
9 **A. Correct.**
10 **Q.** I'm going to now go to the same form you
11 had filled out for Mr. Shore. That's Exhibit 376.
12 And are we looking at that now on the screen?
13 **A. Yes.**
14 **Q.** Thank you. At the middle of the document
15 we see the same sentence. Again, did you write
16 that or did Mr. Lopez?
17 **A. Mr. Lopez.**
18 **Q.** It says, vitreous is very important in
19 this case. Now there is an exclamation at the end;
20 correct?
21 **A. Correct.**
22 **Q.** That's to put emphasis on it?
23 **A. That was his intent.**
24 **Q.** And, again, Mr. Lopez wouldn't have done
25 this on his own. You told him to do it; correct?

1 **A. I did not tell him to write those**
2 **sentences.**
3 **Q.** I understand. But you told him to send
4 out vitreous?
5 **A. Correct.**
6 **Q.** And you would have given him whatever
7 instructions needed to be given to send it out;
8 correct?
9 **A. Correct.**
10 **Q.** And like Ms. Brown, Mr. Lopez wrote,
11 vitreous is very important in this case?
12 **A. Correct.**
13 **Q.** And that, again, as a medical examiner,
14 it was important to you to find out whether or not
15 these folks were dehydrated at the time of death?
16 **A. Correct.**
17 **Q.** So on October 14th, 2009, you got some
18 additional information; correct? Do you recall
19 getting medical records of Kirby Brown and James
20 Shore on October 14th?
21 **A. No.**
22 **Q.** Let me see if I can assist you with that.
23 You did receive the medical records for Kirby Brown
24 and James Shore; correct?
25 **A. Correct.**

1 **Q.** And that would include any record from
2 the paramedic or the EMS personnel that saw them at
3 the scene; correct?
4 **A. Correct.**
5 **Q.** I'm going to have you look at
6 Exhibit 373.
7 **A. Here it is.**
8 **Q.** Thank you. Looking at Exhibit 373, these
9 are the records pertaining to Ms. Brown; correct?
10 **A. Correct.**
11 **Q.** And I'm going to direct you to the second
12 page. Do you see a fax transmittal page?
13 **A. Yes.**
14 **Q.** What's the date at the top?
15 **A. October 14th.**
16 **Q.** 2009?
17 **A. Yes.**
18 **Q.** Does that give you an indication of when
19 the records were obtained?
20 **A. Yes.**
21 **Q.** Let's put medical records you received on
22 or about October 14th, 2009. Correct?
23 **A. Correct.**
24 **Q.** I'll also hand you Exhibit 378. These
25 are the medical records of Mr. Shore; correct?

1 **A. Correct.**
2 **Q.** So you had these two sets of documents on
3 or about October 14, 2009?
4 **A. Correct.**
5 **Q.** Now, after you got those records, did you
6 review them?
7 **A. Yes.**
8 **Q.** And you were able to obtain some
9 information from those records that assisted you;
10 correct?
11 **A. Correct.**
12 **Q.** On October 16 the results on Ms. Brown's
13 testing came back; correct?
14 **A. Probably. I don't know.**
15 **Q.** Let me direct you to your notes. Do you
16 have your autopsy report?
17 **A. Yes.**
18 **Q.** Looking at the AIT lab results, does that
19 indicate the date you got the results back for
20 Ms. Brown?
21 **A. Yes.**
22 **Q.** And that was October 16, 2009; correct?
23 **A. Says October 21st date reported.**
24 **Q.** Can you look at the one for Kirby Brown.
25 **A. Correct. October 16, 2009, date**

1 **reported.**

2 **Q.** And the results came back no illicit
3 drugs, no prescription drugs, no concerns of drugs;
4 correct?

5 **A. Correct.**

6 **Q.** And the vitreous came back not
7 dehydrated; correct?

8 **A. Correct.**

9 **Q.** Not even mildly dehydrated; correct?

10 **A. Correct.**

11 **Q.** Very normal; correct?

12 **A. Correct.**

13 **Q.** October 21st you received the results
14 back for James Shore; correct?

15 **A. Correct.**

16 **Q.** And, again, the tox on the blood came
17 back negative for drugs?

18 **A. Correct.**

19 **Q.** Of any kind?

20 **A. Correct.**

21 **Q.** And the vitreous came back not
22 dehydrated?

23 **A. Correct.**

24 **Q.** Not even mildly dehydrated?

25 **A. Correct.**

1 **Q.** So the tests that you sent out that was
2 considered to be very important came back to you on
3 the 16th and 21st as negative; correct?

4 **A. Correct.**

5 **Q.** And, again, on that date when you got
6 these two tests back, having done your autopsy,
7 looking at the medical records, and getting the
8 test, you still had no conclusions; correct?

9 **A. As I recall, correct.**

10 **Q.** You drafted your report on October 24;
11 correct?

12 **A. Correct.**

13 **Q.** Mr. Hughes asked you earlier about your
14 draft of October 24, 2009. Do you have your report
15 in front of you, sir?

16 **A. Yes.**

17 **Q.** If you will look at Kirby Brown's first,
18 Exhibit 370. I'm going to direct you to page 5.
19 At the bottom of that we see the draft date of
20 October 24, 2009; correct?

21 **A. Correct.**

22 **Q.** And at the end of this report you wrote,
23 based on the available information, Kirby Brown
24 died from heat stroke. The manner of death is
25 accident. Correct?

1 **A. Correct.**

2 **Q.** Mr. Hughes asked you whether or not you
3 had already written that sentence --

4 **A. Correct.**

5 **Q.** -- when you drafted on October 24;
6 correct?

7 **A. Correct.**

8 **Q.** Do you recall, when I interviewed you on
9 June 17, 2010, telling me that you had not yet
10 included that sentence? You did so when you filed
11 an amendment on February 2nd?

12 **A. I don't recall that.**

13 **Q.** Would it refresh your recollection to
14 look at your interview transcript?

15 **A. Sure.**

16 **Q.** Dr. Lyon, I'm going to show you
17 Exhibit 663, first page. And you see transcript of
18 interview Dr. Lyon; correct?

19 **A. Correct.**

20 **Q.** You see mine and Mr. Li's name?

21 **A. Correct.**

22 **Q.** Mr. Hughes and Detective Diskin?

23 **A. Correct.**

24 **Q.** The date is June 17, 2010?

25 **A. Correct.**

1 **Q.** The interview at 6:00 o'clock took 45
2 minutes?

3 **A. Correct.**

4 **Q.** I'm going to have you take a look at
5 page 11, starting at lines 14 to 19. If you read
6 that to yourself. Let me know if that helps you
7 remember.

8 **MR. HUGHES:** Your Honor, pursuant to the rule,
9 I'd ask the witness also look at page 10, which
10 would include lines 9 through 28.

11 **MS. DO:** That's fine, Your Honor.

12 **THE COURT:** Okay.

13 **Q.** BY MS. DO: Dr. Lyon, Mr. Hughes is
14 requesting that you start at page 10. Read from
15 line 9 on page 10 to page 11, line 19, please.
16 Have you had a chance to review it?

17 **A. Yes.**

18 **Q.** Do you now recall telling me on June 17,
19 2010, that you drafted the report containing the
20 autopsy finding but did not include the conclusion
21 until you were asked to amend it on February 2nd?

22 **A. I think there is a confusion. The**
23 **amendment, as I recall, had to do with the death**
24 **certificate and not the autopsy report.**

25 **Q.** Let me take a look at the transcript.

1 That's fine. Thank you for the
2 clarification.

3 **A. It may not be clear in the report.**

4 **That's the question.**

5 **Q.** When you say "report," you mean the
6 transcript?

7 **A. Yes.**

8 **Q.** Okay. So in the interview I asked you
9 what the amendment on February 2nd, 2010, pertained
10 to. And your answer was to change the cause and
11 manner of death from pending to heat stroke and
12 accident. Is that right?

13 **A. Correct.**

14 **Q.** The confusion is that you were talking
15 about the death certificate?

16 **A. As I recall.**

17 **Q.** But not the report. Is that your
18 testimony?

19 **A. Correct.**

20 **Q.** It's your testimony that on October 24th
21 you had this conclusion; is that correct?

22 **A. I may not have had that conclusion. I**
23 **may have dictated it to be transcribed that way.**

24 **Q.** So did the dictation occur on October 24?

25 **A. No. The transcription did.**

1 **Q.** So you would have dictated before the
2 24th?

3 **A. Correct.**

4 **Q.** And so what I'm asking is did you arrive
5 with finalities to this conclusion when you had it
6 dictated and ultimately transcribed on
7 October 24th?

8 **A. No.**

9 **Q.** So it's more accurate, then, to say that
10 when you drafted it and had it dictated on the
11 24th, this was a probable conclusion?

12 **A. Correct.**

13 **Q.** You had a presumption that it was heat
14 stroke?

15 **A. Correct.**

16 **Q.** But not final; correct?

17 **A. Correct.**

18 **Q.** And your presumption that it was heat
19 stroke, sir, based upon the information you had up
20 to this time, was based upon your autopsies,
21 medical records, and the labs; correct?

22 **A. Correct.**

23 **Q.** But you did not issue a final report on
24 October 24th, '09; correct?

25 **A. Correct.**

1 **Q.** You did not sign the death certificate on
2 that date; correct?

3 **A. Correct.**

4 **Q.** You held on to your investigation, so to
5 speak, at the request of the county attorney;
6 correct?

7 **A. Correct.**

8 **Q.** Ms. Polk or somebody from her office
9 contacted you and said hold your investigation;
10 correct?

11 **A. To that effect. Correct.**

12 **Q.** And you did so?

13 **A. Correct.**

14 **Q.** At this point when you reached that
15 presumption of heat stroke on October 24th, after
16 having that information contained in your
17 investigation, is it fair to say that the
18 predominant fact for you was -- were the
19 circumstances, the exposure to the high heat?

20 **A. Correct.**

21 **Q.** Then on December 13, 2009, you attended a
22 meeting with the Yavapai County attorney and the
23 Yavapai County Sheriff's Office; correct?

24 **A. Correct.**

25 **Q.** And the purpose of that meeting was for

1 you to get additional information; correct?

2 **A. Correct.**

3 **Q.** So from the time of October 24 to
4 December 13, you had conducted no additional
5 investigation; is that correct?

6 **A. As I recall, that's correct.**

7 **Q.** You didn't request any other labs be run?

8 **A. No.**

9 **Q.** You didn't send out your investigator to
10 do any additional investigation for you; correct?

11 **A. Correct.**

12 **Q.** So you attended this meeting on
13 December 13, and that was held at the Yavapai
14 County attorney's office?

15 **A. I don't know. I attended it by phone.**

16 **Q.** Thank you. You called in for that
17 meeting?

18 **A. Correct.**

19 **Q.** And you were in Phoenix?

20 **A. Correct.**

21 **Q.** And when you called in for that meeting,
22 you became aware that Ms. Polk was there?

23 **A. Correct.**

24 **Q.** Mr. Hughes was there?

25 **A. Correct.**

1 Q. Detective Diskin was there?
 2 A. **Correct.**
 3 Q. And also in attendance were the medical
 4 examiners from Coconino County?
 5 A. **Correct.**
 6 Q. That would be Dr. Mosley?
 7 A. **Correct.**
 8 Q. And Dr. Czarnecki?
 9 A. **Correct.**
 10 Q. And Dr. Mosley, as I understand it,
 11 conducted the autopsy of Ms. Neuman?
 12 A. **Correct.**
 13 Q. Dr. Mark Fischione, your boss, was also
 14 present; correct?
 15 A. **Correct.**
 16 Q. In total, there were about 18 people from
 17 four different agencies at this meeting; correct?
 18 If you know.
 19 A. **I don't know.**
 20 Q. Do you have any reason to dispute that if
 21 that's the information given to us?
 22 A. **No.**
 23 Q. The purpose for you attending this
 24 meeting, as well as for Dr. Mosley investigating
 25 the death of Ms. Neuman, was to get additional

1 information from the sheriff's office; correct?
 2 A. **Correct.**
 3 Q. Information that they had gathered from
 4 the scene; correct?
 5 A. **Correct.**
 6 Q. Circumstances of what happened on
 7 October 8th?
 8 A. **Correct.**
 9 Q. They also provided you with witness
 10 statements?
 11 A. **Correct.**
 12 Q. Statements by witnesses who were there on
 13 October 8th?
 14 A. **Correct.**
 15 Q. Now, as I understand it, they didn't just
 16 give you the audio recordings or the transcripts of
 17 these interviews. Detective Diskin summarized it
 18 for you; correct?
 19 A. **I don't recall.**
 20 Q. Do you recall somebody sitting there and
 21 reading to you from beginning to end an interview
 22 of the witness?
 23 A. **No.**
 24 Q. Do you recall that you were given
 25 synopsis of whatever witness was discussed?

1 A. **I don't recall.**
 2 Q. Did it seem brief?
 3 A. **I don't know.**
 4 Q. Okay. So you're just not certain?
 5 A. **Correct.**
 6 Q. My question to you, Dr. Lyon, is did you
 7 at that time know how many witnesses were
 8 interviewed that had direct knowledge and
 9 observation of what happened at the site on
 10 October 8th?
 11 A. **I don't recall.**
 12 Q. Do you know whether or not
 13 Detective Diskin presented you with all of those
 14 witness statements?
 15 A. **No.**
 16 Q. You don't know; correct?
 17 A. **I don't know.**
 18 Q. It's very possible that Detective Diskin
 19 made the choice, made the selection, of what
 20 witnesses to present to you; correct?
 21 A. **Correct. That's possible.**
 22 Q. Did you ever ask him for access to his
 23 file to look at all the witness statements?
 24 A. **No.**
 25 Q. To this day, you have not done that;

1 correct?
 2 A. **Correct.**
 3 Q. And at this meeting you asked
 4 Detective Diskin again any information about what
 5 happened at that site on October 8th; correct?
 6 A. **Correct.**
 7 Q. And the information could flow the other
 8 way. He was free to give you whatever was
 9 important; correct?
 10 A. **Correct.**
 11 Q. The same thing with the county attorneys?
 12 A. **Correct.**
 13 Q. Now, after this meeting on December 13,
 14 2009, you still had not had a final conclusion;
 15 correct?
 16 A. **Correct.**
 17 Q. When did you issue your final conclusion?
 18 A. **At the time I was requested to.**
 19 Q. By whom?
 20 A. **I don't recall the source of the request.**
 21 **But, as I recall, our investigator called me and**
 22 **asked me to unpend the death certificate.**
 23 Q. And that occurred on February 2nd, 2010;
 24 correct?
 25 A. **The report was signed that date. The**

1 **death certificate -- I don't recall the exact date**
2 **it was amended --**

3 **Q.** Let's stay with the report, first of all.

4 You issued, meaning released, your reports for both
5 James Shore and Kirby Brown with your final
6 conclusion on February 2nd, 2010?

7 **A. Correct.**

8 **Q.** The amendment that you would have filed
9 is what you need to do officially to change cause
10 and manner; correct?

11 **A. Correct.**

12 **Q.** You did that at the request of the county
13 attorney?

14 **A. Correct.**

15 **Q.** On February 2nd, 2010 -- correct? -- as
16 to your report.

17 **A. I signed my report on February 2nd, 2010.**

18 **Q.** Let's clear that up. Do you have your
19 amendment in front of you? I can direct you to
20 Exhibit 371, Bates stamp 2046. Do you see it now,
21 sir?

22 **A. Who are we talking about?**

23 **Q.** We're talking about Kirby Brown. The
24 date of the amendment is February 2nd, 2010;
25 correct? Is that correct, sir?

1 **A. Yes.**

2 **Q.** Okay. What we're looking up on the
3 screen here is Exhibit 371 at Bates stamp 4026, the
4 date you amended to change cause and manner in the
5 case of Ms. Brown; correct?

6 **A. Correct.**

7 **Q.** You did so the same for James Shore on
8 that same day; correct?

9 **A. Correct.**

10 **Q.** Between the time of December 13, 2009, to
11 February 2nd, 2010, did you do any additional
12 investigation?

13 **A. No. I don't think so.**

14 **Q.** You didn't direct anyone in your office,
15 either a forensic technician or a medical
16 investigator, to do anything further; is that
17 correct?

18 **A. Correct.**

19 **Q.** Other than the information that you
20 received verbally December 13, 2009, did you get
21 any additional information from the detectives
22 between that date and the date you amended your
23 cause and manner on February 2nd?

24 **A. I don't recall.**

25 **Q.** Is it likely that you did not?

1 **A. It's likely.**

2 **Q.** All right. Am I correct, then, that the
3 time that you issued your final report on
4 February 2nd, 2010, it had been some 116 days or
5 four months since you had conducted the autopsy?
6 Is that correct?

7 **A. Correct.**

8 **Q.** And that would be the same for both
9 Mr. Shore and Ms. Brown; correct?

10 **A. Correct.**

11 **Q.** Then are you aware that the very next day
12 after you issued your final report, 116 days after
13 the autopsy, is the day that Mr. Ray was indicted?

14 **A. As I recall, there was an anticipated**
15 **event that triggered the request for me to finalize**
16 **my report.**

17 **Q.** And what was that event?

18 **A. I don't recall the events. I don't know**
19 **if I was told.**

20 **Q.** Do you know if that event is that the
21 county attorney intended to go to the grand jury on
22 February 3rd, 2010?

23 **A. I don't recall.**

24 **Q.** Okay. Fair. Do you know whether or not
25 Mr. Ray was, in fact, indicted on February 3rd,

1 2010?

2 **A. No.**

3 **Q.** Any reason to disputes that?

4 **A. No.**

5 **Q.** And you, having been one of the medical
6 examiners in this case, understand that Mr. Ray is
7 indicted with three counts of homicide?

8 **A. Correct.**

9 **Q.** Three counts of reckless manslaughter;
10 correct?

11 **A. Correct.**

12 **Q.** What I want to understand, Dr. Lyon, is
13 this: During the time that you had the 116 days,
14 the four months, from the time of autopsy to the
15 time you issued your report, day after the
16 indictment comes in, you have reviewed
17 Exhibit 373 -- correct? -- which is the medical
18 records for Kirby Brown?

19 **A. Correct.**

20 **Q.** You have reviewed Exhibit 378, the
21 medical records of James Shore?

22 **A. Correct.**

23 **Q.** All right. You had told
24 Detective Hughes -- I'm sorry. Mr. Hughes -- that
25 you believe you had reviewed other medical records?

1 **A. Correct.**
 2 **Q.** At this point are you certain of that?
 3 Let me qualify my question. Before you issued your
 4 final report on February 2nd, 2010, are you certain
 5 that you reviewed other medical records?
 6 **A. Yes.**
 7 **Q.** Do you recall which ones?
 8 **A. No.**
 9 **Q.** Okay. Let me ask you then -- let me ask
 10 you this: Do you remember how thick -- the
 11 thickness of the documents you looked at?
 12 **A. It was a large stack.**
 13 **Q.** It was a large stack?
 14 **A. Correct.**
 15 **Q.** Did you subpoena those records?
 16 **A. No.**
 17 **Q.** They were obtained by the county attorney
 18 and provided to you; correct?
 19 **A. As I recall, that's correct.**
 20 **Q.** I understand that just a few days ago, on
 21 March 24, six days ago, seven days ago, the county
 22 attorney sent you some documents. Correct?
 23 **A. Correct.**
 24 **Q.** I'm going to show you just to refresh
 25 your memory a letter by the Yavapai County

1 Attorney. And it's dated March 28, 2011; correct?
 2 **A. Correct.**
 3 **Q.** It indicates in this letter that they
 4 sent you four CDs with records on March 24th;
 5 correct?
 6 **A. Correct.**
 7 **Q.** And this letter was to clarify what those
 8 records were; correct?
 9 **A. Correct.**
 10 **Q.** And the first set were medical records
 11 for the three victims; correct?
 12 **A. Correct.**
 13 **Q.** The second is medical records relating to
 14 the surviving participants of the 2009 sweat lodge;
 15 correct?
 16 **A. Correct.**
 17 **Q.** So they were sending you what?
 18 Duplicates?
 19 **A. I don't know. Some of it may have been**
 20 **duplicates. Others may have been original,**
 21 **original to me.**
 22 **Q.** So what I'm asking you -- first of all,
 23 did you review the records that they sent you just
 24 seven days ago?
 25 **A. No.**

1 **Q.** You don't know, then, if those records
 2 are the same or different than the ones you believe
 3 you reviewed before February 2nd?
 4 **A. I reviewed the records that they sent me**
 5 **seven days ago on Kirby Brown and James Shore.**
 6 **Q.** Which we put right here?
 7 **A. Correct. Those were included in that.**
 8 **And I did review those medical records.**
 9 **Q.** Understood. You said you reviewed other.
 10 And by "other," I mean not Kirby Brown, not James
 11 Shore. Do you recall who else you reviewed?
 12 **A. No.**
 13 **Q.** You don't remember the names?
 14 **A. No.**
 15 **Q.** Let me ask you about Liz Neuman. I'm
 16 going to give you what's been marked as
 17 Exhibit 365. It's volume one of Liz Neuman's
 18 medical records. Do you think you've seen these
 19 three volumes?
 20 **A. I don't know.**
 21 **Q.** I'm going to direct you to the first
 22 page, Bates stamp 2587. Do you see the date of
 23 April 6, 2010?
 24 **A. Yes.**
 25 **Q.** And it looks like a transmittal sheet

1 from the Yavapai County Sheriff's Office; correct?
 2 **A. Yes.**
 3 **Q.** From a Detective Shonna Willingham?
 4 **A. Yes.**
 5 **Q.** To Flagstaff Medical Center?
 6 **A. Yes.**
 7 **Q.** For the records of Liz Neuman; correct?
 8 **A. Correct.**
 9 **Q.** On April 6th, 2010; correct?
 10 **A. Correct.**
 11 **Q.** That would be two months after you wrote
 12 your report on February 2nd, 2010; correct?
 13 **A. Correct.**
 14 **Q.** So based upon that, it's a logical
 15 inference, Doctor, that you did not review this set
 16 of records at the time that you issued your report;
 17 correct?
 18 **A. Not those three volumes.**
 19 **Q.** Did you ever receive a request from the
 20 defense to provide copies of whatever is
 21 contained --
 22 Let me ask you this question first:
 23 Whatever you reviewed to reach your final report,
 24 would that be contained in your file?
 25 **A. No.**

1 Q. Where would that be contained?
 2 A. **It might be contained in the Yavapai**
 3 **County Medical Examiner file.**
 4 Q. Which you contract for?
 5 A. **Yes.**
 6 Q. That's what I mean. So with the Yavapai
 7 County Medical Examiner's file, would the records,
 8 whatever you reviewed by February 2nd, be contained
 9 in there?
 10 A. **I don't know. There's a records**
 11 **retention. And I don't know if those medical**
 12 **records were retained.**
 13 Q. At the time you looked at them, they
 14 would be in there; correct?
 15 A. **I would have those records. As I recall,**
 16 **I was provided those records. But I don't know if**
 17 **I picked them up at the office or if they were**
 18 **shipped to me. I don't know if those medical**
 19 **records were retained in the file.**
 20 Q. Dr. Lyon, did the county attorney's
 21 office ever communicate to you a request by the
 22 defense for copies of all records containing your
 23 files including those you relied on?
 24 A. **Yes.**
 25 Q. You produced to us whatever records you

1 had in your file; correct?
 2 A. **Correct.**
 3 Q. Would it surprise you to learn that we
 4 did not receive anything other than your autopsy
 5 report and your autopsy notes?
 6 A. **No.**
 7 Q. To your knowledge, we did not receive
 8 records or copies of the records you looked at;
 9 correct?
 10 A. **Correct.**
 11 Q. So at this time, we know by February 2nd,
 12 2010, you've looked at those two records and
 13 possibly others, but you're just not sure; correct?
 14 A. **Correct.**
 15 MS. DO: Your Honor, could we take the break?
 16 THE COURT: Thank you.
 17 Ladies and gentlemen, we will take the
 18 noon recess at this time. Please remember the
 19 admonition. I do have other matters I have to
 20 attend to at 1:00 o'clock. I want you to be
 21 reassembled at 1:30.
 22 And, Doctor, you're excused at this time
 23 as well.
 24 Thank you.
 25 (Recess.)

1 THE COURT: The record will show the presence
 2 of the defendant, Mr. Ray; the attorneys, the jury.
 3 The witness, Dr. Lyon, has returned to the witness
 4 stand. Ladies and gentlemen, Ken Nevills is now
 5 assisting us as bailiff.
 6 Ms. Do?
 7 MS. DO: Thank you, Your Honor.
 8 Q. Good afternoon, Dr. Lyon. Thank you
 9 again for your patience with my questions.
 10 Before we broke for lunch, we were
 11 talking about the timeline of your investigation.
 12 And we got up to February 2nd, 2010, the date that
 13 you issued your report; correct?
 14 A. **Correct.**
 15 Q. And you told Mr. Hughes that it is your
 16 conclusion or opinion in this case that the cause
 17 of death for Kirby Brown and James Shore is heat
 18 stroke; correct?
 19 A. **Correct.**
 20 Q. I would like to talk to you about your
 21 conclusion and perhaps get into the details and
 22 circumstances a little bit more. You conducted
 23 your autopsy on the 9th of October; correct?
 24 A. **Correct.**
 25 Q. Can you tell me all of the medical

1 facts -- and by "medical," I want you to exclude
 2 information you obtained from the detective
 3 regarding the scene or witness statements.
 4 Can you tell me all of the medical facts
 5 upon which you relied to reach the conclusion of
 6 heat stroke.
 7 A. **Unresponsive or unconscious at the scene.**
 8 **Transported to the hospital.**
 9 Q. Can you slow down.
 10 A. **Unconscious at the scene.**
 11 Q. Okay.
 12 A. **Essentially, no heartbeat, carbon**
 13 **monoxide level was done. And that was within**
 14 **normal range.**
 15 Q. So negative?
 16 A. **Correct. That's about it.**
 17 Q. What did you glean, other than what
 18 you've told us, from the medical records of Kirby
 19 Brown and James Shore that supported your
 20 conclusion that this is heat stroke?
 21 A. **There was, essentially, no other**
 22 **diagnoses that were made.**
 23 Q. Okay. So let me try and elaborate on
 24 this a little bit more. You learned from the
 25 medical records that both were unconscious at the

1 scene; correct?

2 **A. Correct.**

3 **Q.** Both had no heartbeat; correct?

4 **A. Correct.**

5 **Q.** Meaning they were, essentially, asystole?

6 **A. One was pulseless electric activity.**

7 **That's, essentially, dead.**

8 **Q.** That would be Mr. Shore?

9 **A. Correct.**

10 **Q.** The carboxyhemoglobin was negative?

11 **A. Correct.**

12 **Q.** Which means you ruled out carbon

13 **monoxide?**

14 **A. That was done at the hospital. And that**

15 **was within normal range.**

16 **Q.** I'm going to also add in here that you

17 **conducted your autopsy and you ruled out other**

18 **causes; right?**

19 **A. Correct.**

20 **Q.** You also did a tox screen. We'll call

21 **that a medical fact. And you ruled out illicit**

22 **drugs?**

23 **A. Correct.**

24 **Q.** You ruled out overdosed?

25 **A. Correct.**

1 **Q.** Both of these -- all of these

2 **circumstances of medical facts would be true as to**

3 **Kirby Brown and James Shore; correct?**

4 **A. Yes.**

5 **Q.** A person could be unconscious at the

6 **scene and not die of heat stroke; correct?**

7 **A. Correct.**

8 **Q.** A person could be asystole, no heartbeat,

9 **and not die of heat stroke; correct?**

10 **A. Correct.**

11 **Q.** And carbon monoxide doesn't have any

12 **specific meaning to whether it's heat stroke or**

13 **something else; correct?**

14 **A. Correct.**

15 **Q.** And when you conducted your autopsy, you

16 **ruled out natural disease and other injuries;**

17 **correct?**

18 **A. Correct.**

19 **Q.** But that could include heat stroke or

20 **something else?**

21 **A. Correct.**

22 **Q.** Your tox screen eliminated illicit drug

23 **overdose, but that could include heat stroke or**

24 **something else?**

25 **A. Correct.**

1 **Q.** Could you tell the jury, looking at your

2 **conclusion, on a scale of 100 percent, how much in**

3 **terms of percentage did the medical facts make up**

4 **your conclusion?**

5 **A. Are you including autopsy results as**

6 **medical facts? Everything on that --**

7 **Q.** Yes.

8 **A. More than 50 percent.**

9 **Q.** Okay. More than 50 percent. Let me ask

10 **you this: In addition to these medical facts, you**

11 **also included in your conclusion circumstantial**

12 **evidence; correct?**

13 **A. Correct.**

14 **Q.** By circumstantial evidence, you're

15 **telling the jury that includes information given to**

16 **you by Detective Diskin; correct?**

17 **A. Correct.**

18 **Q.** About what happened at the scene?

19 **A. Correct.**

20 **Q.** What witnesses saw or didn't see?

21 **A. Correct.**

22 **Q.** So are you telling me that the medical

23 **facts that we see up there comprised 50 percent of**

24 **your conclusion and your circumstantial evidence is**

25 **another 50?**

1 **A. No. I'm saying the circumstantial would**

2 **be more than 50.**

3 **Q.** How much of the circumstantial is your

4 **conclusion?**

5 **A. Above 50 percent.**

6 **Q.** Can you give us a better estimate?

7 **A. No.**

8 **Q.** Detective -- excuse me. Dr. Lyon, I've

9 **asked you this question before; correct? In our**

10 **previous interview?**

11 **A. I don't recall.**

12 **Q.** That's okay. I know it's been some time.

13 **Do you recall on the date of June 17, 2010, I asked**

14 **you on this recorded interview how much of your**

15 **conclusion was the circumstantial evidence. Do you**

16 **remember that question being put to you?**

17 **A. No.**

18 **Q.** Would it refresh your recollection to

19 **look at that transcript?**

20 **A. Yes.**

21 **Q.** I'm going to refer you to Exhibit 663,

22 **page 17, line 16 to 20, and ask you to read for**

23 **yourself line 16 through 21. All right?**

24 **Have you read it?**

25 **A. Yes.**

1 Q. Now, sir, having read that, does it
2 refresh your memory as to what your answer was on
3 June 17, 2010?

4 A. **It doesn't refresh my memory. That's**
5 **what's documented.**

6 Q. It doesn't help you remember any better
7 today?

8 A. **Correct.**

9 Q. You wouldn't dispute that that's what you
10 told me on June 17?

11 A. **Correct.**

12 Q. On June 17 when I asked you how much of
13 your conclusion was based strictly on the
14 nonmedical circumstantial evidence, your answer was
15 what, sir?

16 A. **90 to 95 percent.**

17 Q. If I were to do my math, then, taking the
18 circumstantial evidence out of the equation, 5 to
19 10 percent was medical?

20 A. **Correct.**

21 Q. So 5 to 10 percent of your conclusion
22 that it was heat stroke in this case is based upon
23 the medical facts; correct?

24 A. **Ballpark figure.**

25 Q. Sure. So these are facts that we will

1 all agree are undisputed; correct?

2 A. **Correct.**

3 Q. The remainder of your conclusion, then,
4 is based strictly on the circumstantial evidence?

5 A. **Correct.**

6 Q. And the circumstantial evidence didn't
7 come from you going to the scene and putting your
8 eyes on the scene; correct?

9 A. **Correct.**

10 Q. It didn't come from you actually talking
11 to the witnesses; correct?

12 A. **Correct.**

13 Q. It came from Detective Diskin and the
14 state; correct?

15 A. **Correct.**

16 Q. And the circumstances you told us that
17 you relied on included that there was a sweat lodge
18 ceremony?

19 A. **Correct.**

20 Q. That it was hot?

21 A. **Correct.**

22 Q. That people got sick?

23 A. **Correct.**

24 Q. And that people died?

25 A. **Correct.**

1 Q. And that was 90 to 95 percent ballpark
2 figure the basis of your conclusion?

3 A. **Correct.**

4 Q. You would agree with me that somebody
5 could go into a sweat lodge ceremony, be exposed to
6 heat, and come out ill or sick or die of another
7 cause; correct?

8 A. **It's possible.**

9 Q. You would agree with me that somebody
10 exposed to extreme heat could be suffering from a
11 secondary process?

12 A. **I'm not sure. Do you mean another**
13 **disease?**

14 Q. Another cause.

15 A. **Correct.**

16 Q. So you could have heat but there could
17 also be something else going on?

18 A. **Correct.**

19 Q. So let me ask you this question: If 90
20 to 95 percent of your conclusion in this case is
21 heat stroke is based on circumstantial evidence
22 provided to you by the state, you would agree with
23 me that the reliability, the accuracy, integrity of
24 your conclusion is only as good as the information
25 that was provided to you?

1 A. **Correct.**

2 Q. Let me ask you one more question about
3 your conclusion. Are you familiar with the
4 National Association of Medical Examiners?

5 A. **Yes.**

6 Q. And they also go by the acronym NAME?

7 A. **Correct.**

8 Q. Could you tell the jury what that
9 association is.

10 A. **It's a professional organization for**
11 **forensic pathologists.**

12 Q. That's an organization that you're
13 familiar with?

14 A. **Yes.**

15 Q. Is there some sort of membership to it?

16 A. **Yes.**

17 Q. Are you a member?

18 A. **Yes.**

19 Q. And is it an organization that
20 promulgates standards?

21 A. **Yes.**

22 Q. Standards that govern your profession?

23 A. **I'm not sure about standards. Guidelines**
24 **may be more accurate.**

25 Q. Sure. Guidelines?

1 **A. Yes.**
2 **Q.** And do you as a medical examiner adhere
3 to those guidelines?
4 **A. Yes.**
5 **Q.** Do you as a medical examiner from Yavapai
6 County and Maricopa County, both offices, adhere to
7 that guideline?
8 **A. We try to.**
9 **Q.** Could you tell the jury, under the
10 guidelines of this association, what is the
11 percentage that you have to be certain of, with
12 respect to your conclusion, in order to sign a
13 death certificate?
14 **A. It depends on the cause of death.**
15 **Q.** Okay. In this case?
16 **A. In this case, an accident, more likely**
17 **than not or preponderance of evidence, which would**
18 **mean greater than 50 percent.**
19 **Q.** So let's talk about the matter --
20 the 51 -- greater than 50 percent. That means
21 51/49; correct?
22 **A. Correct.**
23 **Q.** And does that apply to cause?
24 **A. It applies to both.**
25 **Q.** Cause and manner?

1 **A. Correct.**
2 **Q.** So in addition to the medical facts being
3 5 to 10 percent of your conclusion, you're also
4 telling this jury that your conclusion is 51
5 percent; right?
6 **A. Correct.**
7 **Q.** Meaning that all you had to determine is
8 that it's just a little bit more likely that it's
9 heat stroke in order to reach that conclusion;
10 correct?
11 **A. Correct.**
12 **Q.** 51/49?
13 **A. Correct.**
14 **Q.** And so, as you sit here, Dr. Lyon, can
15 you tell the jury whether you believe the cause of
16 death in this case is heat stroke beyond a
17 medical -- reasonable medical degree of certainty?
18 **A. No.**
19 **Q.** And you understand that in a criminal
20 case involving homicide, the standard, the burden,
21 for the jury is beyond a reasonable doubt?
22 **A. Correct.**
23 **Q.** And those two are not the same; correct?
24 **A. Correct.**
25 **Q.** Let me talk to you a little bit more

1 about your conclusion and Dr. Mosley's conclusion.
2 We understand you did not perform the autopsy or
3 the investigation of Ms. Neuman. Correct?
4 **A. Correct.**
5 **Q.** Did you know Dr. Mosley prior to this
6 case?
7 **A. Yes.**
8 **Q.** That was from prior professional
9 dealings?
10 **A. Yes.**
11 **Q.** Do you believe that Dr. Mosley is a
12 competent medical examiner?
13 **A. Yes.**
14 **Q.** A reliable one?
15 **A. Yes.**
16 **Q.** A good one; correct?
17 **A. Correct.**
18 **Q.** And you agree that like any profession,
19 there can be a reasonable difference of opinion?
20 **A. Correct.**
21 **Q.** And doesn't mean anyone is wrong. There
22 is just a difference of opinion; correct?
23 **A. Correct.**
24 **Q.** And in this case, Dr. Lyon, you and
25 Dr. Mosley did have a difference of opinion. And

1 we'll talk about it in more detail. You did have a
2 difference of opinion; correct?
3 **A. Correct.**
4 **Q.** And that difference of opinion was
5 whether or not to call the cause of death in this
6 case "heat stroke" or not; correct?
7 **A. Correct.**
8 **Q.** And this difference of opinion that you
9 had with Dr. Mosley, the other medical examiner in
10 this case, was one of the subjects of the meeting
11 you had with the county attorney and the sheriff's
12 office on December 13; correct?
13 **A. Correct.**
14 **Q.** So let me talk to you a little bit about
15 the difference of opinion with Dr. Mosley. And
16 we're going to talk about that meeting. Again,
17 people can have reasonable differences; correct?
18 **A. Correct.**
19 **Q.** And Dr. Mosley in this case believed,
20 based upon his training and experience, that in
21 order to call something "heat stroke," you had to
22 find objective medical criteria of an elevated body
23 temperature; correct?
24 **A. Correct.**
25 **Q.** And that elevated body temperature,

1 according to Dr. Mosley, is 106 degrees Fahrenheit?
 2 **A. I don't know that.**
 3 **Q.** Do you know whether or not in the medical
 4 literature, in the medical profession, that many
 5 doctors, forensic pathologists, believe you need to
 6 find a threshold requirement of 104, 105, or 106?
 7 **A. Not forensic pathologists.**
 8 **Q.** Okay. Doctors?
 9 **A. Yes.**
 10 **Q.** And it was Dr. Mosley's opinion, because
 11 there was no evidence of an elevated core
 12 temperature in any of these decedents, that he
 13 could not call it "heat stroke"; correct?
 14 **A. Correct.**
 15 **Q.** And you differed with him?
 16 **A. Correct.**
 17 **Q.** And that difference of opinion is that
 18 sometimes you can't get a core temperature;
 19 correct?
 20 **A. Correct.**
 21 **Q.** And so you felt that that did not
 22 preclude a finding of heat stroke?
 23 **A. Correct.**
 24 **Q.** But that was a difference you had with
 25 Dr. Mosley?

1 **A. Correct.**
 2 **Q.** Dr. Mosley also disagreed with the cause
 3 of death being called "heat stroke" because he
 4 felt, based upon his training and experience, that
 5 there had to be evidence of dehydration; correct?
 6 **A. I don't recall that.**
 7 **Q.** Okay. If Dr. Mosley were to say that,
 8 would you have any reason to dispute?
 9 **A. No.**
 10 **Q.** You would agree with me -- right? -- that
 11 in your field there are many doctors who differ
 12 with you and believe that dehydration is a
 13 component of heat stroke?
 14 **A. Correct.**
 15 **Q.** And in this case Kirby Brown showed no
 16 evidence of dehydration?
 17 **A. Correct.**
 18 **Q.** James Shore showed no evidence of
 19 dehydration?
 20 **A. Correct.**
 21 **Q.** You did become aware in reviewing Liz
 22 Neuman's medical records she showed no evidence of
 23 dehydration?
 24 **A. I don't recall that.**
 25 **Q.** Any reason to dispute that?

1 **A. No.**
 2 **Q.** And we already know that none of these
 3 folks had an elevated core temperature above 104
 4 degrees Fahrenheit; correct?
 5 **A. None that was documented.**
 6 **Q.** Do you know that Liz Neuman had a
 7 documented rectal temperature of 101.7 degrees at
 8 about 6:46 p.m.?
 9 **A. I don't recall that.**
 10 **Q.** Would that in any way change your
 11 opinion?
 12 **A. No.**
 13 **Q.** Again, you had a difference of opinion
 14 with Dr. Mosley; correct?
 15 **A. Correct.**
 16 **Q.** Let me digress for just a moment here. I
 17 understand it's your belief that dehydration is not
 18 a necessary component. But you do acknowledge that
 19 there are many others in your profession, the
 20 medical field, that believe that dehydration is the
 21 pathway to death and a necessary component;
 22 correct?
 23 **A. I don't know that. There are physicians**
 24 **out there that do believe that.**
 25 **Q.** Many of them would include the doctors

1 that treat live patients, emergency medicine
 2 doctors; correct?
 3 **A. I don't know.**
 4 **Q.** No reason to dispute it?
 5 **A. No.**
 6 **Q.** Mr. Hughes asked you a number of
 7 questions about whether or not you can,
 8 essentially, rehydrate someone who is deceased. Do
 9 you remember those questions?
 10 **A. Yes.**
 11 **Q.** And it's your opinion -- right? -- that
 12 you cannot rehydrate a person who is deceased?
 13 **A. Correct.**
 14 **Q.** If somebody is asystolic for more than an
 15 hour and all the witnesses who put their eyes and
 16 their hands on that person believe that person to
 17 be asystolic and deceased, you can't rehydrate
 18 them; correct?
 19 **A. Correct.**
 20 **Q.** So the vitreous fluid testing that you
 21 did that you sent out on October 13th -- you have
 22 no reason to dispute the accuracy of those results;
 23 correct?
 24 **A. Correct.**
 25 **Q.** And, as I understand it, vitreous testing

1 actually in forensic pathology is the gold standard
 2 to test dehydration. Correct?
 3 **A. Correct.**
 4 **Q.** And electrolyte imbalances?
 5 **A. Correct.**
 6 **Q.** And so in this case, using the gold
 7 standard, you were not disputing that Kirby Brown
 8 and James Shore were not dehydrated at the moment
 9 of death?
 10 **A. Correct.**
 11 **Q.** Let me talk to you, Doctor, about this
 12 meeting that you had with the county attorney and
 13 the detectives in this case on December 13. You
 14 already told us earlier that you phoned in to the
 15 meeting?
 16 **A. Correct.**
 17 **Q.** Who notified you of this meeting?
 18 **A. As I recall, it was Dr. Fischione.**
 19 **Q.** That is your boss?
 20 **A. Correct.**
 21 **Q.** And did Dr. Fischione tell you why this
 22 meeting was taking place?
 23 **A. In part to discuss cause and manner and**
 24 **obtain additional information, if there was**
 25 **additional information, regarding the deaths.**

1 **Q.** Okay. You and Dr. Mosley, who were
 2 charged with the duty to decide cause of death in
 3 this case, wanted more information?
 4 **A. Correct.**
 5 **Q.** Needed more information?
 6 **A. Correct.**
 7 **Q.** Because so far you only had 5 to
 8 10 percent medical facts?
 9 **A. Correct.**
 10 **Q.** The other reason you just testified to is
 11 to discuss the cause and manner of death?
 12 **A. Correct.**
 13 **Q.** And prior to going into that meeting with
 14 the county attorney and the detective, you knew
 15 that you had a difference of opinion with
 16 Dr. Mosley; correct?
 17 **A. Correct.**
 18 **Q.** And Dr. Mosley had a difference of
 19 opinion with you; correct?
 20 **A. Yes.**
 21 **Q.** And so this meeting, in part, was called
 22 for you all to have a dialogue?
 23 **A. Correct.**
 24 **Q.** To have a discussion about this?
 25 **A. Correct.**

1 **Q.** Correct?
 2 **A. Correct.**
 3 **Q.** And because all of these deaths and
 4 illnesses occurred in connection to one incident,
 5 you were operating under the belief that the same
 6 cause affected all of them; correct?
 7 **A. Correct.**
 8 **Q.** So when you went to this meeting, you
 9 discussed, in the presence of the county attorney
 10 and the detectives, your difference of opinion;
 11 correct?
 12 **A. Correct.**
 13 **Q.** Do you recall how long that meeting took
 14 place?
 15 **A. I participated for about an hour. I**
 16 **called in late.**
 17 **Q.** And do you know whether the -- the
 18 meeting obviously had been occurring when you
 19 phoned in?
 20 **A. Correct.**
 21 **Q.** You don't know how long it had been going
 22 on?
 23 **A. As I recall, about an hour.**
 24 **Q.** After you hung up, did it end or did it
 25 continue without your presence, if you remember?

1 **A. I hung up. I don't know if it continued**
 2 **or not.**
 3 **Q.** Okay. And so with the county attorney
 4 and the detectives, you all were trying to iron out
 5 these difference; correct?
 6 **A. Correct.**
 7 **Q.** And Dr. Mosley talked about the fact that
 8 he didn't think it was heat stroke. There was no
 9 elevated core temperature, no dehydration; correct?
 10 **A. I don't know if he didn't think it was**
 11 **heat stroke. He may have chosen to use other**
 12 **terminology.**
 13 **Q.** Sure. The terminology he elected in
 14 assigning cause of death was, I believe,
 15 hyperthermia due to prolonged exposure to sweat
 16 lodge, complications of hyperthermia due to
 17 prolonged exposure to sweat lodge?
 18 **A. As I recall, it was complications due to**
 19 **prolonged sweat lodge exposure.**
 20 **Q.** And so this meeting was for you to iron
 21 out these difference?
 22 **A. In part, correct.**
 23 **Q.** In part. And your boss, Dr. Fischione,
 24 was there?
 25 **A. Correct.**

1 Q. And Dr. Mosley's boss was there --
 2 Dr. Czarnecki; correct?
 3 A. Correct.
 4 Q. And questions were asked by the county
 5 attorney and the detectives of you all because
 6 you're the medical examiners; correct?
 7 A. Correct.
 8 Q. And you did your best to answer those
 9 questions?
 10 A. Correct.
 11 Q. Now, you would agree with me that it's
 12 very important, since you serve the citizens of
 13 this state, that there be transparency in your
 14 investigation; correct?
 15 A. Correct.
 16 Q. Anyone who had questions about the
 17 integrity of your investigation should be able to
 18 ask those questions?
 19 A. Correct.
 20 Q. And get answers?
 21 A. Correct.
 22 Q. On June 17, 2010, when Mr. Li and I came
 23 down to Phoenix to interview you, Mr. Hughes was
 24 present; correct?
 25 A. Correct.

1 Q. And do you recall Mr. Li and I attempting
 2 to ask you questions about what happened at this
 3 meeting?
 4 A. Yes.
 5 Q. Do you recall Mr. Li and I asking you
 6 questions about who was present at this meeting?
 7 A. Yes.
 8 Q. And do you recall me trying to ask you
 9 specifically what was the discussion between you
 10 and Dr. Mosley about cause of death?
 11 A. Vaguely.
 12 Q. Okay. And do you remember that at each
 13 of those times when I tried to ask you those
 14 questions, Mr. Hughes objected and instructed you
 15 not to answer?
 16 A. Yes.
 17 Q. In your 11 years as a medical examiner,
 18 have you ever been instructed by a prosecutor to
 19 not answer questions about your investigation?
 20 A. No.
 21 Q. Now, I understand that you're not a
 22 lawyer. And so perhaps you didn't really know what
 23 to do. But you felt compelled to follow
 24 Mr. Hughes' instruction; correct?
 25 A. Correct.

1 Q. So you refused to answer those questions?
 2 A. Correct.
 3 Q. And a second interview was ordered in
 4 order for us to ask you those questions?
 5 A. Correct.
 6 Q. And the questions I asked or tried to ask
 7 then are the questions I'm asking you right now in
 8 front of the jury; correct?
 9 A. Correct.
 10 Q. About who was there, what was discussed?
 11 A. Correct.
 12 Q. Let me talk to you about how you arrived
 13 at heat stroke in this case. We talked a little
 14 bit about the other kinds of cases you deal with --
 15 the border crossing, the elderly in the trailer
 16 homes, and the drug addicts on the street.
 17 And in each of those cases you indicated
 18 to this jury that in order to arrive at a
 19 heat-stroke cause of death, you have to rule out
 20 other causes; correct?
 21 A. Correct.
 22 Q. And that would be true in any case where
 23 you arrive at a conclusion of heat stroke; correct?
 24 A. Correct.
 25 Q. So if you don't have an elevated core

1 temperature, no evidence of dehydration, and you're
 2 relying strictly on the circumstances, you have to
 3 rule out other causes?
 4 A. Correct.
 5 Q. That's why you do your autopsy?
 6 A. Correct.
 7 Q. That's why you send out tox screens;
 8 correct?
 9 A. Correct.
 10 Q. In fact, you would have to do that even
 11 in the case where a person arrives with an elevated
 12 core temperature and evidence of dehydration;
 13 correct?
 14 A. Correct.
 15 Q. Because something else could be going on?
 16 A. Correct.
 17 Q. In order for you as a medical examiner to
 18 make a conclusion that it's heat stroke, you have
 19 to rule out other causes of death?
 20 A. Correct.
 21 Q. In this case you conducted the autopsy
 22 and you were able to rule out things like a brain
 23 aneurism; correct?
 24 A. Correct.
 25 Q. You were able to rule out things like

1 overdosed?

2 **A. Correct.**

3 **Q.** A natural disease; correct?

4 **A. Well, Mr. Shore has natural disease,**
5 **natural heart disease.**

6 **Q.** Let's talk about that. He had an
7 enlarged heart?

8 **A. Correct.**

9 **Q.** Is that something, if you know -- I don't
10 want you to guess. Is that something that he would
11 have known about?

12 **A. Not necessarily, unless he had a**
13 **physician who diagnosed it.**

14 **Q.** So unless someone diagnosed it, it's not
15 that the body would give out warning signs that
16 would tell you you have an enlarged heart?

17 **A. Correct.**

18 **Q.** So you -- as you sit here, I think as you
19 told Mr. Hughes, you're not certain if that could
20 have been a contributing factor, that he had a
21 heart attack?

22 **A. Correct.**

23 **Q.** But it is your opinion that if he had a
24 heart attack, your opinion is that it was brought
25 on by the heat?

1 **A. Correct.**

2 **Q.** So with the exception of that exclusion,
3 you did exclude natural disease; correct?

4 **A. Correct.**

5 **Q.** Do you feel that you have ruled out all
6 other causes of death in reaching your opinion that
7 it's heat stroke?

8 **A. Not every single cause of death.**

9 **Q.** You told Mr. Hughes that you were able to
10 rule out rat poisoning; correct? Or did I
11 misunderstand?

12 **A. Well, the evidence for rat poisoning.**

13 **Q.** So let me ask this again. Because I'm
14 not sure I understood your answer, Doctor. Do you
15 feel confident, as you sit here today in front of
16 this jury, that you've ruled out all causes of
17 death?

18 **A. With more-likely-than-not degree of**
19 **certainty.**

20 **Q.** That 51/49?

21 **A. Correct.**

22 **Q.** You said just a moment ago that your
23 opinion, your conclusion, in this case being 90 to
24 95 percent based on circumstantial evidence is only
25 as good as the information you got; correct?

1 **A. Correct.**

2 **Q.** And so I want to talk to you about what
3 information you got and what information you didn't
4 get. Okay?

5 We're going to go back to the chronology.
6 From the time you conducted your autopsy to the
7 time you did your final report on February 2nd,
8 2010, you had conducted the autopsy; correct?

9 **A. Correct.**

10 **Q.** You'd gotten the medical report?

11 **A. Correct.**

12 **Q.** And you were told by Detective Diskin
13 summaries of whatever witnesses were chosen that it
14 was hot?

15 **A. Correct.**

16 **Q.** That there was a sweat lodge ceremony?

17 **A. Correct.**

18 **Q.** That people got sick?

19 **A. Correct.**

20 **Q.** That people died?

21 **A. Correct.**

22 **Q.** Did they give you any other information
23 regarding the scene on October 8, 2009?

24 **A. As I recall, yes.**

25 **Q.** Okay. And that would be from witness

1 observations of what happened?

2 **A. Correct.**

3 **Q.** And the photographs of the structure
4 itself; correct?

5 **A. Correct.**

6 **Q.** You indicated earlier that in addition to
7 that information, you may have -- you believe you
8 reviewed medical records of other patients; is that
9 correct?

10 **A. Correct.**

11 **Q.** This time you're just not certain?

12 **A. Correct.**

13 **Q.** But is it true that only seven days ago,
14 on March 24th, the prosecutor sent you four CDs?

15 **A. Correct.**

16 **Q.** And those four CDs contained medical
17 records of the other participants who became ill;
18 correct?

19 **A. Correct.**

20 **Q.** Do you know at this moment whether or not
21 the four CDs that you received contains
22 Exhibit 365, 366, 367 and 368?

23 **A. No.**

24 **Q.** And those are four volumes of Liz
25 Neuman's records. You're not sure if those were

1 provided to you; correct?

2 **A. No.**

3 **Q.** Since you only got it seven days ago, you
4 didn't get a chance to look at them?

5 **A. Correct.**

6 **Q.** Do you know whether or not those four CDs
7 that you just got seven days ago also included the
8 medical records of Linda Andresano, Exhibit 151 and
9 152?

10 **A. No.**

11 **Q.** What about Sandra Andretti's medical
12 records?

13 **A. No.**

14 **Q.** Kristina Bivins?

15 **A. No.**

16 **Q.** Kim Brinkley?

17 **A. I don't know if they're there or not.**

18 **Q.** Because you didn't get a chance to
19 review?

20 **A. Correct.**

21 **Q.** It could very well be that in those four
22 CDs is this stack of documents that you've not had
23 a chance to review?

24 **A. Correct.**

25 **Q.** Did you ever get a chance to talk to any

1 of the doctors at Flagstaff Medical or Verde Valley
2 or Sedona who had their eyes and hands on those
3 patients that night?

4 **A. No.**

5 **Q.** So you never talked to Brent Cutshall
6 from Flagstaff Medical Center?

7 **A. No.**

8 **Q.** You never talked to Dr. Vincent Furrey
9 from Verde Valley, who treated James Shore and
10 Kirby Brown?

11 **A. No.**

12 **Q.** So you've not had the opportunity to talk
13 to these doctors and get their sense and impression
14 of what was going on that night with these folks?

15 **A. Correct.**

16 **Q.** Has the prosecution or the detectives
17 ever given you any information that they learned
18 from these doctors?

19 **A. Probably. I don't recall with certainty.**

20 **Q.** Anything that made an impact on you?

21 **A. Probably.**

22 **Q.** Can you recall?

23 **A. No.**

24 **Q.** I understand it's been a while. Let me
25 go to this now. You said you have not had a chance

1 to talk to Dr. Furrey; correct?

2 **A. Correct.**

3 **Q.** And you told this jury earlier that
4 doctors who see live patients, who are trained in
5 emergency medicine, doctors who work in the ER, are
6 a bit more qualified to diagnose symptoms and signs
7 of heat stroke; correct?

8 **A. Correct.**

9 **Q.** Have you had a chance to review the
10 medical records of a Dennis Mehravar?

11 **A. I don't know if I have or not.**

12 **Q.** Okay. I'm going to ask you to take a
13 look at Exhibit 192.

14 May I have a moment, Your Honor?

15 THE COURT: Yes.

16 **Q.** BY MS. DO: Doctor, do you have the
17 medical records of Kirby Brown and James Shore with
18 you up there?

19 **A. No.**

20 **Q.** I'm going to hand you the medical records
21 for Kirby Brown and James Shore, Exhibits 373 and
22 378. If you will verify for me in looking at the
23 medical records whether Dr. Furrey was the
24 attending physician at Verde Valley Medical Center
25 for both decedents.

1 **A. Yes. He was.**

2 **Q.** I'm going to show you Exhibit 192, which
3 is the Verde Valley Medical Center record for
4 Dennis Mehravar. Would you verify whether it's the
5 same Dr. Vincent Furrey who treated him.

6 **A. Yes.**

7 **Q.** I direct your attention to Bates
8 stamp 1811 on that exhibit. Do you have that in
9 front of you, sir?

10 **A. Yes.**

11 **Q.** All right. Do you recognize at the top,
12 again, the name Dr. Vincent Furrey that you had
13 seen on the medical records of Kirby Brown and
14 James Shore?

15 **A. Yes.**

16 **Q.** And do you see the date of October 8,
17 2009?

18 **A. Yes.**

19 **Q.** And there is a time, 1917, which would be
20 7:17 p.m.?

21 **A. Yes.**

22 **Q.** Do you know, as you sit here today, when
23 you've reviewed these medical records prior to your
24 conclusion on February 2nd?

25 **A. As I recall, I have.**

1 Q. All right. Do you recall, then, seeing
2 Dr. Furrey's comment here -- most of these records,
3 Doctor, are dictated and someone transcribed;
4 correct?
5 A. Correct.
6 Q. So this perhaps is a typo. I "splenened"
7 to the patient, Dennis Mehravar, that we did not
8 have a cause for his symptoms or the other people's
9 symptoms that were in the sweat lodge, including
10 the two people that died. Correct?
11 A. Correct.
12 Q. This is the kind of doctor that you said
13 would be better at determining the signs and
14 symptoms of heat stroke; correct?
15 A. Correct.
16 Q. And he said he didn't know?
17 A. Correct.
18 Q. In regard to the summaries or whatever it
19 was that you got regarding witness statements from
20 Detective Diskin, did they ever tell you that there
21 were witnesses who were interviewed that said they
22 saw at least six people foaming at the mouth at the
23 scene?
24 MR. HUGHES: Objection, Your Honor. Misstates
25 the testimony and assumes facts not in evidence.

1 THE COURT: I'll sustain as to the form of the
2 question.
3 MS. DO: Sure, Your Honor.
4 Q. Were you ever told by Detective Diskin
5 that any witness had seen anybody coming out of the
6 sweat lodge ceremony foaming at the mouth?
7 A. I don't recall.
8 Q. Is that something that you would
9 remember?
10 A. It's possible. He may have told me and I
11 don't remember.
12 Q. And you would agree with me that foaming
13 is an objective physical symptom that you might put
14 under medical facts; correct?
15 A. Correct.
16 Q. And foaming or frothy sputum at the
17 mouth -- do you know whether or not that is a sign
18 and symptom of a toxidrome, if you know?
19 A. It can be.
20 Q. It can be; correct?
21 A. Correct.
22 Q. So that's information that you could have
23 used in your investigation before arriving to your
24 conclusion; correct?
25 A. Correct.

1 Q. But, as you sit here today, you just
2 don't remember whether that was provided to you?
3 A. Correct.
4 Q. If it had been provided to you, Dr. Lyon,
5 would that have been something you would have noted
6 in your files?
7 A. No.
8 Q. You wouldn't have noted it anywhere?
9 A. If there were foam coming from the nose
10 and mouth at the time I examined the body, I record
11 that in my report.
12 Q. Okay. Understood. And you obviously --
13 you didn't see any because they were deceased?
14 A. Correct.
15 Q. What I want to know is if the detective
16 told you that your decedents, Kirby Brown and James
17 Shore, were seen foaming at the mouth, that's
18 something that would have made an impression on
19 you?
20 A. Yes.
21 Q. So you would have included that; correct?
22 A. In the information that I took all
23 together to arrive at my opinion, yes.
24 Q. And that is nowhere found in your
25 findings contained in the autopsy report; correct?

1 A. Correct.
2 Q. Did anyone ever tell you from the
3 investigation that people were seen with pinpoint
4 pupils at the scene?
5 A. I don't recall.
6 Q. So no one has told you, for example, that
7 Liz Neuman, the other decedent, had pinpoint pupils
8 at the scene?
9 A. Not that I recall.
10 Q. Did anyone ever tell you that Stephen Ray
11 had pinpoint pupils?
12 A. Not that I recall.
13 Q. Or Sidney Spencer?
14 A. No.
15 Q. Or Tess Wong?
16 A. No.
17 Q. Again, pinpoint pupil is the kind of
18 physical symptom that you would have put under
19 medical facts?
20 A. I would have read it and incorporated it
21 into the information that I used.
22 Q. And that isn't seen in your autopsy
23 report because you didn't get that information;
24 correct?
25 A. I don't put the size of the pupil in my

1 **autopsy reports. They can change in size after**
2 **death.**

3 Q. And I want to ask you that. But what I'm
4 getting at is, in your report you did contain --
5 you did include in your summary a recitation of the
6 circumstances provided to you by the investigator;
7 correct?

8 A. **Correct.**

9 Q. And in that recitation of the
10 circumstances, there is no mention of frothy sputum
11 or foaming?

12 A. **Correct.**

13 Q. There is no mention of pinpoint pupils?

14 A. **Correct.**

15 Q. And do you know whether or not pinpoint
16 pupils considered by the kind of doctors you think
17 are better qualified to treat a live patient --
18 that those doctors consider to be a red flag for
19 toxidrome?

20 A. **Yes.**

21 Q. And you don't dispute that; correct?

22 A. **No.**

23 Q. If you had been told that Liz Neuman, for
24 example, and the other critically ill people had
25 pinpoint pupils, that would have been important

1 information for you to have had?

2 A. **Correct.**

3 Q. Before you reach the conclusion?

4 A. **Correct.**

5 Q. During the time that you had your
6 investigation going from October 9th to
7 February 2nd, did anyone from the state, either the
8 county attorney's office or Detective Diskin's
9 department, ever tell you that night on October 8
10 they took a statement by the person who heated the
11 rocks, and that person said he believed he burned
12 the wrong wood? Were you ever told that?

13 A. **I don't recall that.**

14 Q. You don't recall anyone telling you that
15 a statement was taken that night, the night before
16 you did your autopsy, that a person said they might
17 have burned treated wood?

18 A. **I don't recall.**

19 Q. Would that have been important
20 information for you to have had?

21 A. **Yes.**

22 Q. Why is that, Doctor?

23 A. **Well, perhaps there were some toxins or**
24 **something in the wood that was set aside for**
25 **something other than burning.**

1 Q. Okay. And you know treated wood contains
2 a compound called "copper chromium arsenic," CCA;
3 Correct?

4 A. **No. I know treated wood is not to be**
5 **burned and inhaled.**

6 Q. Okay. But beyond that, that's what you
7 know?

8 A. **Correct.**

9 Q. Now, that would have been important
10 information for you to have. I'm not suggesting
11 that anyone died of CCA or treated wood. But as
12 the medical examiner investigating these deaths,
13 you should have had the prerogative -- right? -- to
14 decide what to test and what not to test; correct?

15 A. **Correct.**

16 Q. And so if somebody came to you the night
17 before you did your autopsy, you could have sent
18 out blood samples for the determination of whether
19 or not there was a toxin in connection with the
20 wood; correct?

21 A. **Yes.**

22 Q. That wasn't provided to you?

23 A. **Not that I recall.**

24 Q. Did anyone from the state, county
25 attorney or the detectives, tell you the night

1 before you did your autopsy or even days after that
2 that same person who said he burned the wrong wood
3 also said --

4 MR. HUGHES: Objection, Your Honor. Misstates
5 the -- first of all, it's not in evidence. But it
6 misstates, when it does come in evidence, what's
7 going to be said. I would object to the form of
8 the question. It assumes facts not in evidence.

9 MS. DO: I'll rephrase, Your Honor.

10 THE COURT: Sustained as to form.

11 Q. BY MS. DO: My question to you, Dr. Lyon,
12 is did anyone ever tell you before you reached your
13 conclusion that this was heat stroke, that someone
14 believed that the materials used in the sweat lodge
15 ceremony had been stored with rat poison?

16 A. **No.**

17 Q. That was not information given to you at
18 any time during the four months you were
19 investigating these deaths; correct?

20 A. **Correct.**

21 Q. The first time any mention of rat poison
22 has been made to you is when?

23 A. **Yesterday or the day before.**

24 Q. By whom?

25 A. **Mr. Hughes.**

1 Q. Now, again, I'm not suggesting that folks
2 here died or got ill from rat poison. But because
3 you're the medical examiner investigating these
4 deaths, it's important for you to have all this
5 information?

6 A. **Correct.**

7 Q. If you had been told that someone thought
8 rat poison might have been involved, what would you
9 have done?

10 A. **Tested for rat poison.**

11 Q. And you didn't get to do that in this
12 case, did you?

13 A. **No.**

14 Q. Did the state ever tell you that they
15 actually sent out samples of the rocks, the
16 materials from the sweat lodge ceremony, including
17 the plastic tarp and select samples of wood, for
18 testing?

19 A. **No.**

20 Q. They never told you that on October 14,
21 2009, they sent out those specific items of
22 evidence to a criminalist in Phoenix to test?

23 A. **I don't recall that.**

24 Q. Do you recall them telling you that a
25 Dawn Sy, S-y, was testing all these samples for

1 toxic volatiles?

2 A. **I don't recall.**

3 Q. Are you aware that the criminalist
4 completed her examination -- are you aware that the
5 criminalist completed her examination two days
6 after you concluded your report?

7 A. **No.**

8 Q. One day after Mr. Ray was indicted?

9 A. **No.**

10 Q. Were you ever provided a copy of that
11 report?

12 A. **No.**

13 Q. Let me approach you, Dr. Lyon, with an
14 exhibit that's been marked as Exhibit 345. I want
15 you to look at it and tell me if you've ever seen a
16 copy of that report.

17 A. **I don't recall if I saw it.**

18 Q. Okay. And so my question, then, is, two
19 days after you came to the conclusion of heat
20 stroke on February 4, did you ever get a report
21 from a criminalist named Sy re toxins?

22 A. **No. I don't recall receiving that.**

23 Q. Do you think that would have been
24 important information for the state to have shared
25 with you before they asked you to amend your cause

1 of death on February 2nd?

2 A. **Yes.**

3 Q. You told the jury earlier in questions by
4 Mr. Hughes that you had no information in this case
5 that organophosphates were involved; is that
6 correct?

7 A. **As I recall.**

8 Q. And, again, Dr. Lyon, you're doing the
9 best job you can; correct?

10 A. **Correct.**

11 Q. And you're working hard to come to a
12 conclusion that you think is accurate; correct?

13 A. **Correct.**

14 Q. And you want that conclusion to be
15 truthful; correct?

16 A. **Correct.**

17 Q. And it can only be so if you're given the
18 necessary information for you to investigate;
19 correct?

20 A. **Correct.**

21 Q. And in this case, you're hearing a lot of
22 things that you weren't given before?

23 A. **Correct.**

24 Q. Did the state ever tell you, during the
25 four months that you investigated these deaths,

1 that they had a statement from a first responder
2 that organophosphates were suspected at the scene?
3 MR. HUGHES: Objection, Your Honor. Misstates
4 the evidence. We don't know who said that.

5 THE COURT: Sustained as to the form.

6 Q. BY MS. DO: Has anyone ever told you that
7 there was a statement by a person who responded to
8 the scene, they suspected organophosphates?

9 MR. HUGHES: Objection. Same objection.

10 THE COURT: Overruled.

11 THE WITNESS: I don't recall.

12 Q. BY MS. DO: That would be important to
13 you?

14 A. **Yes.**

15 Q. So no one told you there was a statement
16 of that sort made on October 8, one night before
17 you did your autopsy?

18 A. **I don't recall hearing that statement.**

19 Q. When was the first time you heard the
20 word "organophosphates" in this case?

21 A. **As I recall, about two days ago.**

22 Q. From whom?

23 A. **Or more than that. Talking about
24 organophosphates. Month or two ago.**

25 Q. From whom?

1 **A. Our investigator contacted me and told me**
2 **that somebody had requested that organophosphates**
3 **be tested for. And I said okay.**

4 **Q. And that was two weeks ago?**

5 **A. I don't remember how long ago it was.**

6 **Q. Let me -- have you seen a copy of the**
7 **report?**

8 **A. Yes.**

9 **Q. And so you got a call from someone in**
10 **your office -- an investigator -- requesting that**
11 **the blood samples of Kirby Brown and James Shore be**
12 **sent out for organophosphate testing?**

13 **A. Yes.**

14 **Q. Do you know whether that request**
15 **originated with Ms. Polk's office?**

16 **A. Not for sure.**

17 **Q. Would that be normal for the county**
18 **attorney to request testing in an ongoing case?**

19 **A. If new information came to light that**
20 **organophosphates may have played a part, then I**
21 **would expect to be notified and then the test done.**

22 **Q. And so you were notified two weeks ago?**

23 **A. I don't recall how long ago it was.**

24 **Q. Okay. Let me --**

25 **MS. DO: Your Honor, Mr. Hughes has agreed to**

1 moving into evidence Exhibit 811.

2 THE COURT: Exhibit 811 is admitted.

3 (Exhibit 811 admitted.)

4 MS. DO: Thank you.

5 **Q. Dr. Lyon, would you take a look at that**
6 **two-page document and tell me if you recognize it**
7 **to be test results generated from AIT Laboratories**
8 **in Indiana?**

9 **A. Yes.**

10 **Q. That's the lab we spoke about earlier?**

11 **A. Yes.**

12 **Q. The same lab you used to test for illicit**
13 **drugs?**

14 **A. Yes.**

15 **Q. And the vitreous for dehydration?**

16 **A. Correct.**

17 **Q. Is that the lab that you then directed**
18 **whomever to send additional blood samples for**
19 **testing of organophosphates?**

20 **A. Yes.**

21 **Q. Looking at that report, does it give you**
22 **an indication of when those results returned?**

23 **A. No.**

24 **Q. Is it at least the month of**
25 **February 2010 -- I'm sorry -- 2011?**

1 **A. Yes.**

2 **Q. And I'm not sure if you can read -- I**
3 **know the copy is not so great. Is it February 8,**
4 **2011?**

5 **A. That was the date they received the**
6 **specimen.**

7 **Q. So then on or about that date would have**
8 **been the request to send it out; correct?**

9 **A. Correct.**

10 **Q. And then February 8th is when the lab in**
11 **Indiana received it?**

12 **A. Correct.**

13 **Q. And the result, as Mr. Hughes asked you**
14 **that one question earlier, was that none was**
15 **detected; correct?**

16 **A. Correct.**

17 **Q. Did Mr. Hughes tell you whether or not**
18 **the lab technician who ran that test told them that**
19 **it was too late to have a reliable test for**
20 **organophosphates because it's been too long?**

21 **A. Yes.**

22 **Q. And that information wasn't asked of you**
23 **under direct examination for this jury, was it?**

24 **A. No.**

25 **Q. If somebody had come to you the day you**

1 did your autopsy or perhaps even the day you sent
2 out the initial labs for dehydration and drugs on
3 October 13, that there was a statement suggesting
4 organophosphates as a possible cause, what would
5 you have done at that moment?

6 **A. That would have been included in the test**
7 **request.**

8 **Q. And that would have been necessary for**
9 **you to rule that out; right?**

10 **A. Correct.**

11 **Q. Now, do you know -- I know Mr. Hughes has**
12 **told you that that lab has told him it's just too**
13 **late now. Do you know that independently that**
14 **organophosphates stay in the blood but for a couple**
15 **of days?**

16 **A. No. I don't recall that.**

17 **Q. All right. But you would agree with me**
18 **that whatever substance, whatever toxin, you want**
19 **to look for, the sooner the better?**

20 **A. Correct.**

21 **Q. You can't wait?**

22 **A. It's best not to.**

23 **Q. Now, you said to this jury that because**
24 **you weren't given that information, you didn't test**
25 **at the relevant time; correct?**

1 **A. Correct.**
 2 **Q.** And because you didn't test at the
 3 relevant time, you cannot exclude organophosphates
 4 as a cause?
 5 **A. Correct.**
 6 **Q.** So let me sum up. And thank you for your
 7 patience, Doctor. Okay. So nothing in your
 8 autopsy to tell you that it's heat stroke; correct?
 9 **A. Correct. Other than it's a negative**
 10 **autopsy.**
 11 **Q.** Understood. No evidence of dehydration;
 12 correct?
 13 **A. Correct.**
 14 **Q.** For any of the decedents, to your
 15 knowledge; correct?
 16 **A. Correct.**
 17 **Q.** No evidence of an elevated core
 18 temperature; correct?
 19 **A. Well, I thought you said Ms. Neuman had**
 20 **an elevated temperature of 100.**
 21 **Q.** Sure. James Shore and Kirby Brown did
 22 not have evidence of an elevated core temperature?
 23 **A. Correct.**
 24 **Q.** Ms. Neuman, assuming you had a chance to
 25 review the records, showed 101.7 at 6:46 p.m. That

1 would not be consistent with other professionals
 2 who believe it's 104 that's a threshold for heat
 3 stroke; correct?
 4 **A. Correct.**
 5 **Q.** You must rule out other causes in order
 6 to rule in heat stroke; correct?
 7 **A. Correct.**
 8 **Q.** You were not given or you were deprived
 9 the opportunity to test for organophosphates at the
 10 time that it mattered; correct?
 11 **A. Correct.**
 12 **Q.** So you didn't test?
 13 **A. Correct.**
 14 **Q.** Or for any other toxin for that matter?
 15 **A. Correct.**
 16 **Q.** You weren't told that people at the scene
 17 were foaming; correct?
 18 **A. Not that I recall.**
 19 **Q.** You weren't told that anyone had pinpoint
 20 pupils; correct?
 21 **A. Not that I recall.**
 22 **Q.** And since you have to rule out other
 23 causes of death, Dr. Lyon, with all the information
 24 that you were not given, what does that do to the
 25 conclusion you rendered at 51 to 49?

1 **A. I'm told when information comes to light,**
 2 **I would keep my -- that opinion.**
 3 **Q.** Okay. So you're still at 51, 49;
 4 correct?
 5 **A. Correct.**
 6 **Q.** But if you had this information on
 7 October 9th, October 11th, or the 12th, you could
 8 have done other things to make this more certain;
 9 correct?
 10 **A. Correct.**
 11 **Q.** Since you cannot rule out
 12 organophosphates, Dr. Lyon, you cannot say with any
 13 degree of certainty that it is heat stroke in this
 14 case; correct?
 15 **A. In my opinion, to the degree of certainty**
 16 **is 50 percent or more.**
 17 **Q.** 50 percent or more?
 18 **A. Correct.**
 19 **Q.** And so if we had done what we needed to
 20 do on October 9, we could be at some point better
 21 than 50 percent?
 22 **A. Correct.**
 23 **Q.** Thank you.
 24 I have nothing further, Your Honor.
 25 **THE COURT:** Thank you, Counsel.

1 Mr. Hughes?
 2 **MR. HUGHES:** Thank you.
 3 **REDIRECT EXAMINATION**
 4 **BY MR. HUGHES:**
 5 **Q.** Doctor, I'm going to try and address some
 6 of the points that Ms. Do brought up. First of
 7 all, you were asked whether any detectives were
 8 present at the autopsy. Do you recall that?
 9 **A. Yes.**
 10 **Q.** Do you know whether it's common, at least
 11 in Yavapai County, for detectives to attend
 12 autopsies of suspicious death?
 13 **A. It is common.**
 14 **Q.** How about in Maricopa County?
 15 **A. It's common there too.**
 16 **Q.** And you've mentioned you were a medical
 17 examiner in Texas?
 18 **A. Correct.**
 19 **Q.** I don't know the answer to this. But do
 20 detectives in Texas attend autopsies as well?
 21 **A. Yes.**
 22 **Q.** You were asked by Ms. Do whether
 23 Detective Diskin was personally present at the
 24 autopsy. Do you remember that?
 25 **A. Yes.**

1 Q. Do you have a clear recollection of
2 whether he was there or not?

3 A. **As I recall, he was.**

4 Q. Are you sure of that?

5 A. **Not absolutely sure.**

6 Q. Ms. Do walked you through a timeline --
7 and you performed your autopsy on or about
8 October 9th; is that correct?

9 A. **Correct.**

10 Q. When you performed your autopsy, she
11 indicated you had not reached a conclusion as to
12 cause of death; is that correct?

13 A. **Correct.**

14 Q. Did you have suspicions at that point as
15 to cause of death?

16 A. **Yes.**

17 Q. AND what were your suspicions at the
18 time?

19 A. **Given the initial background information,
20 heat stroke was a possibility.**

21 Q. What was that background information that
22 you had?

23 A. **That it was a sweat lodge ceremony and
24 heated rocks and hot and people getting sick.**

25 Q. Would a -- would it surprise you that

1 people would get sick or could get sick in a hot
2 environment?

3 A. **No.**

4 Q. Do you recall knowing at that time how
5 long the sweat lodge ceremony was?

6 A. **No.**

7 Q. Do you recall knowing at that time
8 whether there was steam in the air inside the sweat
9 lodge?

10 A. **No.**

11 Q. Do you recall knowing how many people
12 were packed into the sweat lodge?

13 A. **No.**

14 Q. Do you recall how hot -- knowing how hot
15 it got in the sweat lodge?

16 A. **No.**

17 Q. You were asked about your facility in
18 Maricopa County. And I believe Ms. Do described it
19 as state of the art?

20 A. **Correct.**

21 Q. She asked you if you were able to run
22 whatever test you wanted at that facility?

23 A. **Correct.**

24 Q. Were you able to run the tests that you
25 wanted to have run in this case even though the

1 autopsy was performed in Yavapai County?

2 A. **I don't recall. There are certain
3 compounds that the toxicology lab in Maricopa
4 County has to send out for testing because they do
5 not do the testing themselves there.**

6 Q. Were you able to send out, in the case of
7 Ms. Brown and Mr. Shore, any of the samples that
8 you needed to send out for testing?

9 A. **Yes.**

10 Q. Ms. Do asked you some questions about
11 your autopsy report. Do you have those in front of
12 you?

13 A. **Yes.**

14 Q. Do you have the actual marked exhibits in
15 front of you?

16 A. **No.**

17 Q. And she asked some questions about the
18 report of autopsy. In particular, she asked about
19 whether at the time you had that report transcribed
20 on October 24th, at least at that time when you
21 transcribed it, you transcribed that Kirby Brown
22 died from heat stroke, the manner of death is
23 accident?

24 A. **Correct.**

25 Q. Is that what you had transcribed on

1 October 24th?

2 A. **Yes.**

3 Q. And the same question for Mr. Shore.
4 With respect to your summary and opinion, is the
5 summary and opinion that's set forth in the exhibit
6 what you had transcribed on October 24th?

7 A. **Correct.**

8 Q. Now you were asked about some changes
9 that occurred when you finally signed the death
10 certificate. Do you recall that?

11 A. **Yes.**

12 Q. And can you tell us what was changed at
13 that time.

14 A. **The death certificate originally had
15 "pending" as the cause and manner of death. And so
16 for further investigation to be unpended at a later
17 date.**

18 Q. So to show you Exhibit 371, is this the
19 document that you were talking about?

20 A. **Yes.**

21 Q. And can you point out for us on the
22 screen -- you can actually touch on that screen --
23 where it showed "pending."

24 Do you know when the document was
25 actually stamped "amended"?

1 **A. Probably that same day that I made the**
2 **request or was requested.**

3 **Q.** The request to change from pending to
4 your final conclusion?

5 **A. Correct.**

6 **Q.** And is your final conclusion, then, set
7 forth in the following page of that same exhibit?

8 **A. Yes.**

9 **Q.** Is that what you're referring to as the
10 change that you made?

11 **A. Yes.**

12 **Q.** Now, your final conclusion of heat stroke
13 and accident for Ms. Brown -- is that the same
14 conclusion that you had back in October when you
15 transcribed Ms. Brown's autopsy report?

16 **A. Yes.**

17 **Q.** With respect to Mr. Shore, turning now --
18 which is Exhibit 376, is this the same document for
19 Mr. Shore that we just saw for Ms. Brown?

20 **A. Yes.**

21 **Q.** And is your opinion, then, as to cause of
22 death and manner of death for Mr. Shore the same as
23 you had transcribed back in October of 2009?

24 **A. Yes.**

25 **Q.** Ms. Do asked you about the comment by

1 your assistant, Joseph Lopez, on the testing sheet
2 regarding vitreous. Do you recall that?

3 **A. Yes.**

4 **Q.** Can you explain to us why you believe
5 vitreous testing was important in this case.

6 **A. To see if there is evidence for**
7 **dehydration.**

8 **Q.** If there had been dehydration, is that
9 something you would have noted in your autopsy
10 report?

11 **A. Yes.**

12 **Q.** And was that information you needed to
13 know, then, before you could complete or close out
14 that autopsy report?

15 **A. Yes.**

16 **Q.** You, I think, used the phrase that
17 eventually you unpend or unpended the death
18 certificates?

19 **A. Correct.**

20 **Q.** Can you tell us what you mean by that.

21 **A. The cause and manner were listed as**
22 **pending because I had insufficient information to**
23 **certify a cause and manner of death at the time of**
24 **the autopsy. So that allows me to do additional**
25 **studies and get those results and for law**

1 **enforcement and others to do further investigation.**

2 **Q.** And prior to unpending a death
3 certificate, is that document public record?

4 **A. Yes.**

5 **Q.** Do you know whether prior to it being
6 unpended it would be released, for example, to the
7 press if they asked for it?

8 **A. As I recall is --**

9 **Q.** Do you know one way or the other?

10 **A. I don't remember offhand.**

11 **Q.** Do you know whether it's common in
12 homicide cases to keep a death certificate pending
13 until an investigation is concluded?

14 **A. It's not uncommon.**

15 **Q.** Is that something you've seen here in
16 Yavapai County?

17 **A. I don't recall. I do it in Maricopa**
18 **County.**

19 **Q.** And how about in Texas?

20 **A. Yes.**

21 **Q.** Now, after this, your autopsy reports
22 were transcribed on October 24th. I believe you
23 mentioned that you went to a meeting in December at
24 the Yavapai County Attorney's Office. And Ms. Do
25 asked you some questions about that?

1 **A. Correct.**

2 **Q.** You mentioned you attended by telephone?

3 **A. Correct.**

4 **Q.** And about how long into the meeting did
5 you call in?

6 **A. I estimate about halfway through or an**
7 **hour in to it.**

8 **Q.** Who asked you to be a part of that
9 meeting?

10 **A. Dr. Fischione.**

11 **Q.** Do you know whether Dr. Fischione was the
12 moving force in having that meeting set up?

13 **MS. DO:** Objection. Leading, Your Honor.

14 **THE COURT:** You may answer that if you can.

15 **THE WITNESS:** No.

16 **Q.** **BY MR. HUGHES:** Do you know one way or
17 the other?

18 **A. No.**

19 **Q.** In addition to -- was Dr. Fischione a
20 participant in the meeting?

21 **A. Yes.**

22 **Q.** What other medical examiners participated
23 in the meeting, if you recall?

24 **A. Dr. Mosley and Dr. Czarnecki.**

25 **Q.** Did you and another medical examiner use

1 that meeting as an opportunity to discuss your
2 findings to that point?

3 MS. DO: Objection. Leading, Your Honor.

4 THE COURT: Overruled.

5 You may answer that if you can, Dr. Lyon.

6 THE WITNESS: Yes.

7 Q. BY MR. HUGHES: Do you know, in fact,
8 whether Dr. Czarnecki had been to the scene of the
9 sweat lodge?

10 A. Yes.

11 Q. That was a bad question. I asked if you
12 knew. Had Dr. Czarnecki been to the scene of the
13 sweat lodge?

14 A. **To my knowledge, I was told that he had**
15 **been.**

16 Q. And did Dr. Czarnecki discuss some of the
17 things he had seen to you and the other medical
18 examiners?

19 A. **As I recall, yes.**

20 Q. And which medical examiner's office does
21 Dr. Czarnecki work for?

22 A. **The Coconino County medical examiner**
23 **office in Flagstaff.**

24 Q. Had you worked with Dr. Czarnecki in the
25 past?

1 A. No.

2 Q. You were asked some questions about
3 medical records that you reviewed in this case
4 prior to reaching your final conclusion. Do you
5 recall those questions?

6 A. Yes.

7 Q. And, as you are here today, do you recall
8 for certain whether you reviewed Ms. Neuman's
9 medical records from Coconino County?

10 A. **Not for certain. But that would have**
11 **been something I would have wanted to have done.**
12 **That's what I routinely do.**

13 Q. In fact, is that what you indicated in
14 the interview with Ms. Do back earlier this year
15 had occurred?

16 A. **I don't recall.**

17 Q. Showing you Exhibit 665, which is a
18 transcript of that interview with Ms. Do in
19 January, I'm going to show you page 13, starting at
20 line 3 and going down to line 11. Does that
21 refresh your recollection as to whether you
22 believed you may have reviewed Ms. Neuman's
23 records?

24 MS. DO: Your Honor, I believe counsel
25 misstated. I was not present at that interview.

1 MR. HUGHES: I apologize. It may have been
2 Mr. Li who was present. In fact, it was.

3 THE WITNESS: I don't recall. I would have
4 requested medical records and reviewed them.

5 Q. BY MR. HUGHES: Was that at least your
6 recollection in this interview?

7 A. Yes.

8 Q. You indicated that the circumstantial
9 evidence made up the primary part of your opinion
10 in this case?

11 A. Correct.

12 Q. What do you mean by "circumstantial
13 evidence"?

14 A. **The scene and what people said happened**
15 **as reported to me, medical record.**

16 Q. Have you ever been in an accidental
17 investigation -- can you be 100 percent certain as
18 a forensic pathologist as to the cause of death?

19 A. **Not usually.**

20 Q. I imagine there's cases where you find a
21 bullet in the heart or knife in the heart. Other
22 than cases like that, would you normally be
23 100 percent certain?

24 A. No.

25 Q. Is there always a degree of uncertainty

1 in making a diagnosis as a forensic pathologist?

2 A. I --

3 MS. DO: Your Honor, object to the line of
4 leading questions.

5 THE COURT: Overruled.

6 You may answer.

7 THE WITNESS: There's usually some degree of
8 uncertainty.

9 Q. BY MR. HUGHES: Turning to the meeting in
10 December of 2009, can you tell us what the
11 disagreement was between you and Dr. Mosley that
12 Ms. Do was asking questions about.

13 A. **As I recall, Dr. Mosley thought the term**
14 **"heat stroke" was a clinical term only. And I**
15 **disagreed that it's not exclusively a clinical term**
16 **or a term used by physicians to treat live patients**
17 **only. And that in DiMaio's book he argues that the**
18 **term "heat stroke" can be used or made as a**
19 **diagnosis without a core body temperature. And it**
20 **was a discussion as to the manner of death, whether**
21 **it should be accident or homicide.**

22 Q. Now, you mentioned DiMaio's book. What
23 is that?

24 A. **Forensic Pathology, one of the texts that**
25 **we consult frequently.**

1 Q. Did Dr. Mosley then, have a preferred
2 term to call the cause of death?
3 A. Yes.
4 Q. And what was the preferred term that
5 Dr. Mosley was advocating for?
6 A. He preferred "hyperthermia."
7 Q. Did you and he discuss the reasons for or
8 against one term as opposed to the other?
9 A. Yes.
10 Q. And did you discuss the book that you
11 just referred to?
12 A. Yes.
13 Q. Do you know whether the other medical
14 examiners took part in the meeting?
15 A. Yes.
16 Q. I'm sorry. That was a bad question. Did
17 other medical examiners take part in the discussion
18 over what term, "heat stroke" or "hyperthermia," to
19 use?
20 A. As I recall, they did.
21 Q. And can you tell me what your
22 understanding is as far as the difference between
23 heat stroke and hyperthermia.
24 A. Hyperthermia, to me, means elevated body
25 temperature. It's nonspecific. You can have it

1 with a fever, from a flu, bacterial infection,
2 exercising. Whereas heat stroke is a potentially
3 fatal condition from an increased body temperature.
4 Q. Under the definition that you're using of
5 "heat stroke," would a patient, then, also be
6 suffering from hyperthermia?
7 A. Yes.
8 Q. Is your definition, then, include more of
9 the causation for the result of hyperthermia?
10 MS. DO: Objection. Leading, Your Honor.
11 THE COURT: Sustained.
12 Q. BY MR. HUGHES: Can you distinguish,
13 then, between the terms "hyperthermia" and heat
14 "stroke"?
15 A. Yes.
16 Q. Does one -- what does one definition
17 include that the other does not?
18 A. "Hyperthermia" means an elevated body
19 temperature, an umbrella term. It's etiologically
20 nonspecific. "Heat stroke" means that the body
21 has -- is no longer able to compensate with its
22 heat load. And it's potentially fatal. It's a
23 subcategory of hyperthermia.
24 Q. Did Dr. Mosley attempt to change your
25 mind about what term to use?

1 A. He might have tried.
2 Q. Did you -- were you willing to change
3 your mind?
4 A. No.
5 Q. And you mentioned there was a discussion
6 about manner of death as well?
7 A. Correct.
8 Q. Can you describe for us what that
9 discussion was.
10 A. That was whether the manner should be
11 homicide, in that the deaths were at the hands of
12 another. And I objected. I thought it should be
13 accident because there was no evidence or no
14 information that there was intent to do harm. The
15 doors weren't blocked. People weren't under threat
16 of death if they tried to leave. Therefore,
17 manner, accident.
18 Q. And Ms. Do, in asking some questions
19 about this meeting in December, asked about some of
20 the things that you used from that meeting to reach
21 your conclusion, your final conclusion.
22 Do you recall what other information was
23 provided to you at the meeting?
24 A. There was a PowerPoint presentation.
25 Q. And can you tell us what that PowerPoint

1 presentation included?
2 A. It included --
3 MS. DO: Your Honor, may we approach?
4 THE COURT: Yes.
5 Ladies and gentlemen, feel free to stand
6 and stretch.
7 Dr. Lyon as well.
8 (Sidebar conference.)
9 MS. DO: Your Honor, I have no objections with
10 counsel going into the PowerPoint. But the
11 PowerPoint contained summaries of statements from
12 the priors. And so I hope he's not opening that
13 door.
14 MR. HUGHES: Your Honor, I believe Ms. Do went
15 in to great detail about what the doctor was told
16 and what he relied upon making his decision. And
17 in that PowerPoint there is discussion about prior
18 incidents in '05 and '08 and, I believe, statement
19 by Mr. Ray that he needed the sweat lodges to be
20 even hotter than before.
21 That is information that was provided to
22 the doctor. And the doctor indicated in his
23 interview, the defense interview, that he did
24 review the PowerPoint. I think it would be very --
25 quite honestly, it would be dishonest to leave the

1 jury with the opinion of only some of the things
2 that the doctor was given to rely upon and not the
3 other things.

4 THE COURT: Ms. Do, anything else?

5 MS. DO: Not unless the Court needs to hear
6 from me.

7 THE COURT: There can't be any leading. If
8 that PowerPoint is something that went into his
9 opinion, it seems it ought to come out.

10 MS. DO: Your Honor, I was very careful with
11 my questions to restrict it to the circumstances of
12 the scene on October 8, 2009. This doctor has
13 testified both under direct and cross what
14 circumstances were relevant to him. It was the
15 fact that there was a sweat lodge ceremony, the
16 fact that it was hot, that people got sick, and
17 that people died. This is another attempt to back
18 door in that information, Judge.

19 THE COURT: Offhand, I don't know why that
20 would be, what happened in previous years. I can't
21 see that. But there has been a discussion now what
22 went into his opinion, and a long list was made of
23 things.

24 MS. DO: Judge --

25 THE COURT: But if it's part of the opinion, I

1 don't know.

2 MS. DO: Judge, this is strictly under
3 Rule 803. He's given his opinion. He's stuck by
4 it. 803 precludes the state from allowing the jury
5 to hear the basis of which is inadmissible
6 evidence. And there is a 403 balancing. I think
7 if the Court allows it, it's going to be error.

8 THE COURT: You know, I've heard that so much
9 in this case --

10 MS. DO: I don't mean to throw that around as
11 rhetoric. I do feel strongly about it. Before --
12 if this is going to be an issue, I would ask that
13 we take a break and resolve it in a more
14 comfortable situation than having the jury stand
15 by.

16 MR. HUGHES: Your Honor, this is again a
17 situation where the defense asks questions on a
18 topic and then tries to tie the state's hands. In
19 this case, it's particularly blatant. It goes
20 directly to what the state provided to the doctor,
21 what information he had available to make his
22 determination.

23 Ms. Do asked a great deal of questions
24 about that December 2009 meeting. She knew that
25 this was discussed at the meeting. And then to tie

1 the state's hands on that, it is simply unfair,
2 misleads the jury. It is now relevant. The door
3 has been opened to it.

4 THE COURT: And you've already -- in your
5 cross you're questioning the reliability of the
6 information. And from your standpoint, I would
7 think, fit into that category. Otherwise it seems
8 to be leaving a gap.

9 MS. DO: Your Honor, I'd ask the Court look at
10 Rule 703. It states that facts or data that are
11 otherwise inadmissible shall not be disclosed to
12 the jury. That's mandatory. Shall not be
13 disclosed to the jury by the proponent of the
14 opinion. The state is the proponent. Unless the
15 Court determines that the probative value in
16 assisting the jury to evaluate the expert's opinion
17 substantially outweighs the prejudicial effect.

18 And we've litigated there ad nauseam.
19 And the Court has made a number of warnings
20 regarding the misleading nature of the prior acts,
21 regarding the inherent prejudicial value in that.

22 I just don't think that the probative
23 value -- the witness has stuck to his opinion. It
24 was 51/49. He stuck to it. I only went into the
25 circumstances of the scene. I didn't ask him about

1 any of the priors. I don't think this allows the
2 door to be busted wide open.

3 MR. HUGHES: Your Honor, in this case 703
4 might apply if I'd ask those questions in my direct
5 examination. Ms. Do opened the door. I didn't
6 bust it open. It's now relevant under the general
7 rules of relevancy, also to complete the
8 information that Ms. Do has brought up incompletely
9 from this witness.

10 MS. DO: I would just warn that yesterday we
11 were under the assumption that this witness had
12 relied on the medical records. This morning he's
13 indicated both to counsel and I and on the
14 testimony -- in testimony that he's not even looked
15 at this.

16 Counsel is just going to ask the
17 question, and it going to be dangled in front of
18 jury.

19 MR. HUGHES: I'm going to ask -- I agree with
20 the Court. I can't ask leading questions. And I
21 will ask him some open-ended questions about the
22 PowerPoint presentation that was provided to him
23 that he reviewed. I think that's appropriate.

24 MS. DO: If I may add one more thing, Your
25 Honor. Under the 403 balancing, I think this Court

1 needs to look at that PowerPoint presentation. The
2 Court has heard sufficient evidence to make a
3 determination of whether or not that information is
4 even accurate.

5 For example, the 2005 incident regarding
6 Daniel P. They didn't give this witness his
7 medical records. They told this witness that
8 person suffered from heat stroke, which is not
9 true. So we're going to have a minitrial within
10 minitrial.

11 THE COURT: Let me ask right here.
12 Mr. Hughes, is that true? There was talk the
13 person had heat stroke?

14 MR. HUGHES: There was mention of Mr. Pfankuch
15 in that PowerPoint presentation.

16 THE COURT: As having heat stroke?

17 MR. HUGHES: I don't recall if it was having
18 the symptoms --

19 MS. DO: Your Honor, I have it. Can we take a
20 break?

21 THE COURT: I need to see that. I was going
22 to take a break and talk about scheduling anyway.
23 Let's do that. Come right back.

24 (End of sidebar conference.)

25 THE COURT: Ladies and gentlemen, we're going

1 to discuss this legal issue in a little different
2 context. We're going to take a brief recess.
3 We'll take the afternoon recess. Please be
4 reassembled at 15 after. I want to start right
5 about that time. Please remember the admonition.

6 Dr. Lyon, you're excused for the break as
7 well.

8 Parties will remain.

9 (Proceedings continued outside presence
10 of jury.)

11 THE COURT: The record will show that the jury
12 has left the courtroom. Mr. Ray, the attorneys,
13 are present. Mr. Li has left for a moment.

14 Ms. Do, you were expressing an objection
15 about the question that was going to go to the
16 PowerPoint.

17 MS. DO: Yes. That's correct, Your Honor. I
18 believe that that question would have elicited
19 testimony by this witness that he was provided on
20 December 13, 2009, with evidence that was
21 inadmissible. Primarily, this detective's
22 summaries of what occurred -- allegedly occurred in
23 '05, '06, '07, and '08.

24 I'll provide the Court with a copy of
25 that PowerPoint that was given to us by the state.

1 My objection goes not only to the grounds under 703
2 but specifically to 403.

3 This PowerPoint is replete with
4 inaccurate information, misleading information.
5 And I think the Court needs to look at it.

6 But just to point out specifically the
7 alleged information provided to this witness
8 regarding Daniel Pfankuch in 2005. It was stated
9 that Mr. Pfankuch was diagnosed with heat stroke.
10 And we know that is absolutely not true.

11 THE COURT: May I please see that, Ms. Do?

12 MS. DO: Yes.

13 THE COURT: Was there a diagnosis of
14 dehydration?

15 MS. DO: There was a diagnosis of dehydration,
16 mild dehydration. But it's not the only incident
17 of misleading or inaccurate information. And
18 think that if the Court were to look at every slide
19 in that PowerPoint, just based upon the testimony
20 received in this Court so far, the testimony
21 contradicts the summaries. Not only were they
22 cherry-picked, but they were summarized in a
23 misleading fashion.

24 So if this witness is to testify that he
25 relied on this information, we're going to have a

1 minitrial within this trial for us to unpack and
2 sort out the misleading information.

3 THE COURT: Mr. Hughes?

4 MR. HUGHES: Your Honor, first of all,
5 Mr. Pfankuch informed the sheriff's department that
6 he was diagnosed with heat stroke and dehydration.
7 That was the basis for that PowerPoint exhibit.

8 Secondly, in the interview of Dr. Lyon
9 that the defense performed in January, the doctor
10 said he'd seen the PowerPoint. But when asked
11 specifically about the Pfankuch, he said he didn't
12 recall that. He said, I'm sure I looked at it.
13 Because he said, I remember looking at the
14 PowerPoint. But he didn't recall the Pfankuch
15 incident.

16 The doctor did recall some of the other
17 incidents that are mentioned in that PowerPoint
18 from other years, 2007, I believe, or 2008. I'm
19 trying to find in the transcript where he discusses
20 that.

21 But with respect to Pfankuch, the doctor
22 indicated he didn't recall it. And if he didn't
23 recall it then, I would not believe he would recall
24 it now.

25 But either way, it is part of the

1 information that was provided by the sheriff's
2 department in an attempt to give the doctor a
3 thorough and comprehensive understanding of what
4 they knew.

5 Detective Diskin will be available for
6 cross-examination to the defense if they want to
7 ask him about why he chose to put particular things
8 in the PowerPoint. That's fair for them to go in
9 to that.

10 But the defense has created a situation
11 where they have asked this doctor about what he was
12 told, what he wasn't told, and left an impression
13 in the jurors' mind that he wasn't told quite a few
14 things about the incident.

15 And it's appropriate for the state at
16 this point to go into what precisely the doctor was
17 told and what was provided to him.

18 THE COURT: You talked about the incident, but
19 then you're talking about prior incidents,
20 Mr. Hughes. How would a prior incident from four
21 years ago -- how would it relate to what an opinion
22 would be as to what caused the situation here?

23 MR. HUGHES: Well, the defense has created a
24 special situation now where they've created an
25 issue and under their cross-examination of the

1 thoroughness of the briefing that was provided to
2 Dr. Lyon. This is relevant, that issue they raised
3 and went in to great depth on in their
4 cross-examination of the thoroughness of the
5 briefing that was provided to Dr. Lyon to the other
6 medical examiners.

7 And then, Your Honor, with respect to the
8 interview, they -- Mr. Li asked the doctor if in
9 the PowerPoint it says 20 participants got sick
10 in 2008. And Mr. Lyon replied, correct. He'd seen
11 that. And then he says -- Mr. Li asks, was that
12 also a relevant fact for you in forming your
13 conclusions as to the cause and manner of death?

14 Mr. Lyon -- Dr. Lyon responded yes to
15 that question. And then Mr. Li goes on and then
16 asks about a statement by Mr. Ray in 2007 that the
17 lodge did not get hot enough. And Mr. Li asks, is
18 that a fact you considered relevant?

19 Dr. Lyon responded he didn't remember and
20 didn't remember how much he considered it.

21 Mr. Li then asked, well, is it relevant?

22 And Dr. Lyon ultimately said, well, yeah.
23 I guess it's relevant.

24 So those are the two things in particular
25 that the doctor remembered and was asked about.

1 The doctor didn't remember the Pfankuch comment
2 specifically. We don't know what his response
3 would be today. But the point is, the question is,
4 what information was provided, how clear it was
5 then.

6 If the defense wants to cross-examine
7 Detective Diskin and ask, did you lie to Dr. Lyon,
8 they're welcome to do that. I think
9 Detective Diskin is going to have the reason why
10 that Pfankuch comment was in there. That was
11 information related directly from Mr. Pfankuch to
12 the detectives.

13 But to say you can't go in to a topic
14 just because the defense doesn't like it -- which
15 is, basically, what they're doing. They're taking
16 us right up to an area, they explore the area
17 thoroughly from their side. And then they don't
18 allow the rest of the story to come in.

19 That's precisely what's not allowed under
20 the rule, precisely why the state's allowed a
21 redirect to come back and address those topics.

22 MS. DO: Your Honor, I think the question that
23 the Court posed is really the right question. What
24 do these prior incidents have anything to do with
25 what caused these folks to die or become ill

1 in 2009.

2 My questioning under cross-examination
3 stayed within the 2009 episode, 2009 incident.
4 It's very clear that this is another attempt to get
5 into the prior acts.

6 I would note that the chief medical
7 examiner, this witness's boss, Dr. Mark Fischione,
8 was interviewed about the same time by Mr. Li in
9 January 2011. And he stated that this information,
10 these factual circumstances from prior incidents or
11 even factual circumstances of the '09, that
12 anything going beyond the autopsy table is not
13 relevant for a medical examiner's determination of
14 cause and manner.

15 I think the Court really needs to
16 seriously weigh the 403 balancing. This is -- we
17 don't need to litigate whether or not this is
18 inadmissible evidence. That's been litigated. The
19 Court has ruled it inadmissible.

20 And so the determination under 703 is
21 that it's presumably barred. And the Court can
22 allow it only if under 403 it determines that it
23 somehow helps the jury to understand this witness's
24 opinion.

25 The witness has testified that his

1 opinion as to the circumstances related to the '09
2 incident -- how hot it was, that there was a sweat
3 lodge ceremony, that people got sick, that people
4 died, and that he asked for medical records of what
5 happened at that incident.

6 I think that to allow the state to then
7 just ask these questions is simply an attempt to
8 get these priors in front of the jury, when we all
9 using our common sense know it cannot bear on his
10 opinion as to cause and manner as to the '09
11 incident.

12 MR. HUGHES: Your Honor, except that overlooks
13 precisely what Dr. Lyon said in his interview to
14 Mr. Li, which is that the 2008 lodge with 20
15 participants getting sick was a relevant fact for
16 him in finding and forming his conclusions as to
17 cause and manner of death.

18 Ms. Do is saying, well, I'm only
19 asking -- she's only asking questions about what
20 caused the injuries in 2009. But she went down a
21 long road saying no one is suggesting that toxic
22 wood made them sick. But did anyone tell you about
23 toxic wood? No one is suggesting that smoke made
24 them sick. Did someone tell you about smoke? No
25 one is suggesting that --

1 And that was the line that they went down
2 as to what information was provided to you in
3 reaching that determination. I simply want to ask
4 the doctor about information that was provided to
5 him in that PowerPoint presentation, which the
6 doctor has told the defense in an interview, was
7 relevant in forming his conclusion as to cause and
8 manner of death.

9 MS. DO: Again, Your Honor, we had three days
10 of evidentiary hearings where the state had
11 opportunity to present evidence, competent,
12 reliable evidence, of these prior incidents. And
13 this Court has ruled and has stated as far back as
14 two weeks ago that those incidents are misleading
15 when an attempt to characterize them as similar
16 to 2009 is made.

17 I think not only is it inadmissible based
18 upon the Court's prior rulings, but now we're
19 getting into 403 issues. If this witness is
20 allowed to testify to that inadmissible category of
21 evidence, then the defense is going to be put in
22 the position of having to disprove the accuracy of
23 that information.

24 Just Mr. Hughes's statement right now
25 that they told this witness 20 people at the 2008

1 incident got sick, that Mr. P. suffered heat
2 stroke. The Court knows based upon the evidence
3 it's heard that that is just not true.

4 And just to be clear, my objection, Your
5 Honor, I don't have any issues with Mr. Hughes
6 asking questions regarding what information was
7 provided to him regarding the '09 incident in his
8 PowerPoint. But beyond that, I think that we're
9 treading on dangerous grounds.

10 THE COURT: We are. There is no doubt about
11 that. That could take us right into the 404(b)
12 area. And I'm looking at the nature of the
13 information provided here.

14 Was it with Mr. Pfankuch -- weren't some
15 of the descriptions -- I remember reading hundreds
16 of pages of interviews about various things,
17 something about walking on hands and superhuman
18 strength. Was that the person?

19 MS. DO: Yes. I think the witnesses' accounts
20 were that he had an out-of-body experience.

21 THE COURT: Actually, superhuman strength.
22 That's one of the things that's sticking in my mind
23 from looking at that. Was punching and that kind
24 of thing?

25 MS. DO: I recall descriptions of him being

1 combative and that the opinions of the observers
2 were he was having an out-of-body experience.

3 But we know, based upon the medical
4 records, he did not have heat stroke. He went in
5 and was out the very same night.

6 MR. HUGHES: Your Honor, we have had testimony
7 now that becoming combative is a sign of someone
8 who is beginning to suffer on that continuum of
9 heat-related illness. That was information that
10 was presented at the 404 hearing dealing with the
11 404 issue.

12 THE COURT: Doctor, excuse me. We're still in
13 the middle of a legal discussion.

14 Thank you.

15 Ken, go ahead and help him. Escort the
16 doctor, please.

17 MR. HUGHES: But, Your Honor, again, that
18 again is overlooking Dr. Lyon's information, the
19 testimony in this transcript, where he indicated he
20 didn't remember the incident involving Pfankuch.
21 There is no indication in there that that was
22 relevant to him.

23 What I intend to ask by nonleading
24 questions is, what do you remember from that
25 PowerPoint, and what that was relevant to your

1 making a determination in this case?

2 We know the answer to that, because it's
3 right here in the transcript, which is the 2008
4 incident and the participants in there who got
5 sick, and then the comment by Mr. Ray in 2007 that
6 he needed to make his sweat lodges hotter. Those
7 are the two things that he remembers.

8 THE COURT: Where is that?

9 MR. HUGHES: Your Honor, in the transcript or
10 in the PowerPoint?

11 THE COURT: In the PowerPoint.

12 MR. HUGHES: If I can take the PowerPoint from
13 you.

14 MS. DO: Your Honor, while counsel is doing
15 that, may I point one case that I have this morning
16 think that we were going to have this issue?

17 THE COURT: Yes.

18 MS. DO: The state's relying on the argument
19 that I opened the door somehow. And door-opening
20 doctrine is as related to invited error. And
21 invited error is construed very narrowly in the
22 context of Rule 703.

23 I'd ask the Court to consider State v.
24 Blakeley, a case of 204 Arizona 429, 2003 decision.
25 And in that case, an expert sociologist was allowed

1 to testify that portions of an interrogation
2 transcript demonstrated coercive tactics.

3 The sociologist had been interviewed --
4 I'm sorry. Had interviewed the defendant but was
5 not permitted to relate what the defendant had told
6 him about his motivation to confess, obviously his
7 statement being inadmissible.

8 On cross-examination the state asked the
9 sociologist about this interview with the
10 defendant, inquiring questions that were put to
11 him. And the defendant then argued the state had
12 opened the door and that he should then be allowed
13 to complete the story and get in his answers, which
14 are inadmissible.

15 The Court there rejected the contention,
16 stating that as the trial court noted, the
17 prosecutor merely asked the doctor about the areas
18 and types of questions he had propounded to the
19 defendant. The state did not inquire into the
20 defendant's answer so the door was never really
21 opened.

22 In this context, I questioned this
23 witness as to what information, and not just
24 summaries of witness observations, but concrete
25 information regarding what was collected as

1 evidence from the scene of 2009.

2 That is far different than saying now
3 that somehow I've opened this door to allow the
4 state to then ask this witness questions about
5 prior incidents.

6 I think the invited-error doctrine just
7 doesn't allow the state to do that simply because I
8 questioned the basis of his opinion. But the basis
9 of opinion related to the 2009 circumstances.

10 So if Mr. Hughes wants to redirect and
11 ask this witness what other information was given
12 to him about the 2009 incident, including whatever
13 statements were made by other witnesses that I
14 didn't go in to, that's fair game. But it's a
15 whole different story to say that that somehow
16 legitimizes what otherwise is inadmissible
17 evidence.

18 MR. HUGHES: Your Honor, the invited-error
19 doctrine is different than the issue of opening the
20 door. There is no error, invited or otherwise, to
21 allow the state to go into an area where the
22 defense has opened the door.

23 Ms. Do's questions were not constrained
24 to what samples were collected that you weren't
25 told about. She was also asked about what

1 statements, allegedly this statement that I still
2 don't believe is even in evidence from the unknown
3 person that made the comment about carbon monoxide
4 and organophosphates. That was a statement they
5 asked, well, was that provided to you?

6 THE COURT: That has to do with what's
7 happening right then. It doesn't have anything to
8 do with what happened three or four years before.

9 MR. HUGHES: But it does have to do with what
10 would changed his opinion or what information was
11 provided to him.

12 THE COURT: So, Mr. Hughes, what you're asking
13 for is a lot of hearsay to come in. That he was
14 given a lot of, essentially, hearsay information
15 that he factored in, and that should come out now
16 in this context. That's what you're saying.

17 MR. HUGHES: That's precisely the sort of
18 thing Ms. Do was asking him also -- The hearsay say
19 of were you told this. Were you told about what
20 this Dawn Sy --

21 THE COURT: And it all has to do with 2009.

22 MR. HUGHES: It does. But it also has to do
23 with the issue of what information was provided to
24 him to reach his opinion.

25 THE COURT: And so how is something in 2004 or

1 five -- how is that -- somehow hearsay from 2004 or
2 2005 -- how is that going to assist in isolating
3 cause of death?

4 MR. HUGHES: Your Honor, I'm not asking to
5 bring in hearsay from 2004 or five. What I'm
6 asking to bring in are the two areas that I've read
7 from the transcript regarding, which is the 2008
8 incident.

9 THE COURT: Okay. From 2008, then?

10 MR. HUGHES: The doctor indicated that that
11 was relevant to him in making his determination as
12 to cause of death. If that information is relevant
13 to him and it was provided to the sheriff's
14 department, it's fair for the state to bring that
15 out.

16 Again, this is not an issue under 703
17 where we're bringing this out in our case in chief
18 with this doctor. Only in redirect because Ms. Do
19 was inquiring of him of the things that were given
20 to him to allow him to reach his opinion.

21 THE COURT: And he answered in a general
22 sense. He relied on the information given to him
23 by the sheriff's office.

24 MR. HUGHES: He relied on the information, but
25 the defense has created the impression that the

1 sheriff's office did not give him comprehensive
2 information about what happened.

3 MS. DO: Your Honor --

4 MR. HUGHES: Your Honor, it's appropriate for
5 the state to provide him with that comprehensive
6 information.

7 The other bit of information that should
8 come in is the other thing that he indicated in his
9 transcript that would be relevant. And that was
10 the 2007 comment by Mr. Ray. I found that now in
11 the PowerPoint.

12 If I can approach, I can give that to
13 Your Honor.

14 Your Honor, again, on that statement,
15 just as the other statements, the detective is
16 available for cross-examination by the defense if
17 they think that that information was improper or
18 false or shouldn't have been given to the doctor.
19 The detective is available. They can confront the
20 person who provided that statement to the doctor.

21 But the defense has opened this door.
22 They've gone down and tried to create an impression
23 that the sheriff's department was not providing
24 information to the doctor. And it quite simply is
25 relevant now to address that concern that they've

1 created.

2 THE COURT: The -- I won't release Dr. Lyon.
3 He won't be excused. But it's just inviting a
4 whole lot of hearsay information to come in. And I
5 see a distinction between that and whether there
6 has been some mention about another possible lead
7 to follow or something like that as opposed to
8 hearsay information and a possible admission
9 regarding 2007.

10 So I'm not going to excuse the doctor,
11 but not going to get into that hearsay. So we do
12 need to take a few minutes.

13 I need to talk about scheduling. What
14 about -- anybody else available today?

15 MR. HUGHES: Your Honor, we have a
16 Mr. Vanderhaar, one of the paramedics coming up. I
17 think he'll be shorter than Mr. Chambliss was. We
18 were hoping to have him on by about 3:30 to 4:00
19 today. I think we'll finish with him today. We
20 were going to call Dr. Mosley tomorrow. Ms. Do
21 wants to interview him. She said she's not
22 available to do that tonight. We'd prefer to do it
23 on Monday. So we're not going to call him
24 tomorrow. We'll allow her to interview him on
25 Monday. And I think we're going to call

1 Mr. Hamilton tomorrow instead.

2 THE COURT: Thank you.

3 (Recess.)

4 (Proceedings continued in the presence of
5 jury.)

6 THE COURT: The record will show the presence
7 of the defendant, Mr. Ray; the attorneys, the jury.
8 The witness has returned to the stand.

9 Mr. Hughes?

10 MR. HUGHES: Thank you.

11 Q. Doctor, you've been asked a lot of
12 questions about toxins and organophosphates. Has
13 Ms. Do shown you any evidence that there were
14 organophosphates on that property?

15 A. No.

16 Q. Did you see anything in your examination
17 of Mr. Shore to lead you to believe that he'd been
18 poisoned by organophosphates?

19 A. No.

20 Q. Did you see anything in your examination
21 of Ms. Brown to lead you to believe that she had
22 been poisoned by organophosphates?

23 A. No.

24 Q. You were asked some questions about --
25 you were asked questions about Mr. Mehravar's

1 medical records and whether you would defer to his
2 treating doctor or not?

3 **A. Correct.**

4 **Q.** Did you perform an autopsy on
5 Mr. Mehravar?

6 **A. No.**

7 **Q.** Do you know whether he was deceased or
8 not?

9 MS. DO: Objection, Your Honor. We'll
10 stipulate that he wasn't.

11 THE COURT: There is a stipulation.

12 MR. HUGHES: I'm not asking if he was.

13 **Q.** Did you know whether he was or wasn't?

14 **A. As I recall, there were three deaths.**

15 **And he wasn't one of them.**

16 **Q.** You were asked if you had seen the
17 record. And you said, I think, maybe or you
18 couldn't recall. Do you have a clear recollection
19 today of the records that you reviewed prior to
20 making your determination?

21 **A. Yes.**

22 **Q.** And what records did you review prior to
23 making your determination?

24 **A. Kirby Brown and James Shore's medical**
25 **records.**

1 **Q.** And do you believe you may have reviewed
2 other records as well?

3 **A. Yes.**

4 **Q.** And do you have a clear recollection what
5 those other records may have been?

6 **A. No.**

7 **Q.** At the time you had performed the autopsy
8 on Ms. Brown and Mr. Shore, did you have the
9 ability at that time to -- first of all, did you
10 know at that time other people had gone to the
11 hospital who had not died?

12 **A. Yes.**

13 **Q.** If you had needed to or wanted to, could
14 you have subpoenaed those records from those other
15 people?

16 **A. Yes.**

17 **Q.** And if you needed to or wanted to, could
18 you have called up and talked to their doctors?

19 **A. Yes.**

20 **Q.** And, Doctor, I'm missing an exhibit. I'd
21 like to see if you have it. Turning your attention
22 to Exhibit 192, do you remember Ms. Do asking you
23 questions about that exhibit?

24 **A. Yes.**

25 **Q.** And Ms. Do, I believe, asked if you would

1 defer to that doctor saying he couldn't determine a
2 cause for the patient's symptoms?

3 **A. Correct.**

4 **Q.** Do you know whether the patient was able
5 to tell the doctor what the circumstances were in
6 that sweat lodge?

7 **A. No.**

8 **Q.** Do you know if he was able to tell the
9 doctor how hot it had been in the sweat lodge?

10 **A. No.**

11 **Q.** How humid?

12 **A. No.**

13 **Q.** How long?

14 **A. No.**

15 **Q.** Do you even know whether the patient had
16 told the doctor -- and that was Dr. Furrey?

17 **A. Correct.**

18 **Q.** If the patient had told Dr. Furrey
19 whether the patient could even recall what had
20 happened?

21 **A. No.**

22 **Q.** Do you know whether the patient could
23 recall or not was documented in that first part of
24 that exhibit Ms. Do showed you?

25 **A. No.**

1 **Q.** Turning your attention, then, to Bates
2 No. 1808 on Exhibit 192. Is that something that's
3 documented on that page?

4 **A. Yes.**

5 **Q.** At the time you performed the autopsy on
6 Kirby Brown, did you see any foam in her mouth?

7 **A. No.**

8 **Q.** Have you seen foam in the mouth of
9 patients that you've performed autopsies on?

10 **A. Yes.**

11 **Q.** Is that something you would normally
12 record in your autopsy report if you'd seen it?

13 **A. Yes.**

14 **Q.** At the time you performed the autopsy on
15 Mr. Brown, did you see any foam in his mouth?

16 **A. Which one are we talking about?**

17 **Q.** I'm sorry. Mr. Shore.

18 **A. Yes.**

19 **Q.** Did you see foam in his mouth?

20 **A. Yes.**

21 **Q.** Can you tell us what your report
22 documents as far as the foam that you saw in
23 Mr. Shore's mouth?

24 **A. The mouth contains a moderate amount of**
25 **pink foam.**

1 Q. Was the foam that you saw in Mr. Shore's
2 mouth -- did that appear to you to be consistent
3 with the illness that you described as causing his
4 death -- the heat stroke?
5 A. Yes.
6 Q. Can you tell us how that could be
7 consistent with heat stroke.
8 A. **He has heat stroke, and he's dying. His**
9 **heart can start to fail, and he can develop fluid**
10 **in his lungs. And the breathing could churn up the**
11 **fluid and create foam, which could then go up his**
12 **airways into his mouth.**
13 Q. Is that something that his heart
14 condition could have put him at more risk for?
15 A. **It could have.**
16 Q. You were asked whether or not the wood
17 that was used -- if you were told whether or not it
18 had been treated with some kind of chemicals.
19 Do you recall that?
20 A. Yes.
21 Q. Have you seen anything, any evidence,
22 that's been admitted in this case that leads you to
23 believe that the wood was treated with chemicals?
24 A. No.
25 Q. I'm going to ask you a hypothetical. If

1 the wood was being burned for several hours in a
2 fire, and there was a family -- a husband, a wife,
3 and their teenaged daughter -- tending that fire
4 for two or three or four hours, would you expect
5 the people tending the fire where that wood is
6 being burned to come into contact with the smoke
7 from the fire to the same degree, less degree, or
8 more degree than someone who just very transitorily
9 comes into contact with the smoke?
10 A. **Less degree.**
11 Q. Maybe that was a bad question. Would you
12 expect the people tending that fire for two or
13 three or four hours to have the same exposure as
14 someone who was just briefly in the area of the
15 fire?
16 A. No.
17 Q. And who would you expect to have more
18 exposure?
19 A. **Those tending the fire.**
20 Q. And if the fire contained toxic smoke,
21 who would you expect to become ill from the smoke?
22 People tending it for two, three, four hours or the
23 people who came in o contact with it very briefly?
24 A. **More likely those attending it. But it's**
25 **going to depend on the exposure too.**

1 Q. What to you mean?
2 A. **Well, someone walks by and takes a lot of**
3 **deep breaths of smoke versus someone that's tending**
4 **it and avoiding the smoke.**
5 Q. Is that something that would be normal
6 for people to take deep breaths?
7 A. No.
8 Q. Ms. Do asked you about a statement from
9 an unknown male, about his suspicion that maybe
10 there were organophosphates. Did she also indicate
11 that that same person indicated it could be carbon
12 monoxide?
13 A. No.
14 Q. And based on your review of the medical
15 records of Mr. Shore, do you believe that he was
16 exposed to carbon monoxide?
17 A. No.
18 Q. And why is that?
19 A. **That was tested for, and it was not**
20 **elevated.**
21 Q. And based on your review of the medical
22 records of Ms. Brown, do you believe that she was
23 exposed to carbon monoxide?
24 A. No.
25 Q. If there is no evidence that

1 organophosphates were actually used on this
2 property where the sweat lodge was located, would
3 that give you more confidence in the opinion that
4 you've given as to the cause of death in this case?
5 MS. DO: Objection. Assumes fact not in
6 evidence.
7 THE COURT: You may answer that.
8 THE WITNESS: Yes.
9 Q. BY MR. HUGHES: If the evidence were to
10 establish that the fire tenders were breathing that
11 smoke for two, three, or four hours and didn't get
12 ill, would that give you more confidence or less
13 confidence in the opinion as to the cause of death
14 of Ms. Brown and Mr. Shore?
15 A. **More confidence.**
16 Q. Thank you, Doctor.
17 MR. HUGHES: I don't have any questions. But
18 the jury might.
19 THE COURT: Ladies and gentlemen, do any of
20 you have any questions for Dr. Lyon?
21 We have a question, Mr. Nevills.
22 (Sidebar conference.)
23 MR. HUGHES: I don't have an objection.
24 MR. LI: I want to note an objection that
25 Mr. Hughes had. He said, did Ms. Do provide you

1 any evidence. We believe that's improper burden
2 shifting. I want to note that for the record. We
3 didn't want to do it in front of jury.

4 THE COURT: I can't do anything about it.

5 MR. LI: I understand. Anyhow, there's a
6 record.

7 THE COURT: Mr. Hughes, did you want to
8 respond?

9 MR. HUGHES: I don't believe it was a burden
10 shift. I just asked if he'd been shown any
11 evidence as to whether there were organophosphates.

12 THE COURT: Okay. There is a record made.
13 Thank you.

14 No objection from either.

15 MS. DO: No, Your Honor.

16 MR. HUGHES: No.

17 (End of sidebar conference.)

18 THE COURT: Here's the question, Dr. Lyon:
19 Approximately how much organophosphates --
20 approximately how much organic phosphorus poison
21 would have to be absorbed by a normal, healthy
22 person to expire from that poison within the
23 timeframe of two hours?

24 THE WITNESS: I don't know.

25 THE COURT: Any follow-up questions?

1 Mr. Hughes?

2 MR. HUGHES: Thank you.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. HUGHES:

5 Q. Doctor, in your years as a forensic
6 pathologist, have you ever seen anybody who died
7 from using organophosphates?

8 A. No.

9 Q. Thank you.

10 THE COURT: Ms. Do?

11 MS. DO: Thank you.

12 RECROSS-EXAMINATION

13 BY MS. DO:

14 Q. Dr. Lyon, I understand you've not
15 personally observed a case of organophosphate
16 poisoning in your experience. But are you aware
17 through the Centers for Disease Control that
18 organophosphate is listed as the most common
19 pesticide poisoning?

20 A. No.

21 Q. Okay. And so that's a bit beyond your
22 experience; correct?

23 A. Correct.

24 Q. And you have no reason to dispute that
25 one way or the other?

1 A. Correct.

2 Q. My last two questions. You indicated
3 that you don't know how much organophosphates would
4 it take to cause a fatality within two hours;
5 correct?

6 A. Correct.

7 Q. And, again, that's beyond your
8 experience?

9 A. Correct.

10 Q. Would you believe that perhaps somebody
11 who is a trained physician in emergency medicine
12 would be better qualified to answer that question?

13 A. They might be.

14 Q. Thank you, Doctor.

15 MR. HUGHES: Your Honor, may I have brief
16 follow-up?

17 THE COURT: Yes.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. HUGHES:

20 Q. Doctor, assuming that the statistic is
21 correct that organophosphates are the most common
22 poison out there, the fact that you've never seen
23 someone die from that, would that lead you to an
24 opinion as to the morbidity or mortality of
25 organophosphates?

1 A. No.

2 Q. The fact that it could be the most common
3 poison people could be exposed to and that you've
4 never seen someone actually die from it, does that
5 lead you to an opinion as to the sort of exposure
6 that you would have to have to actually cause death
7 as opposed to illness?

8 A. Apparently it's safely handled.

9 Q. Thank you.

10 THE COURT: Thank you.

11 Dr. Lyon, you will be excused from the
12 trial at this time; however, you would be subject
13 to recall. So please remember the rule of
14 exclusion of witness still applies.

15 Thank you, sir.

16 MS. POLK: Your Honor, the witness is expected
17 momentarily. I'm not sure he's in the building.

18 THE COURT: We do want to get to another
19 witness today if at all possible.

20 Ladies and gentlemen, please retire to
21 the jury area there and just stand by. We'll start
22 as soon as we can. Thank you.

23 (Recess.)

24 THE COURT: The record will show the presence
25 of the defendant, Mr. Ray; the attorneys, and the

1 jury.

2 And the state may call the next witness.

3 MR. HUGHES: Thank you, Your Honor. The state
4 calls Greg Vanderhaar.

5 THE COURT: Sir, please step to the front of
6 the courtroom where the bailiff is directing you.

7 Raise you're right hand and be sworn by
8 the clerk.

9 GREGORY J. VANDERHAAR,
10 having been first duly sworn upon his oath to tell
11 the truth, the whole truth, and nothing but the
12 truth, testified as follows:

13 THE COURT: Sir, would you please begin by
14 stating and spelling your full name.

15 THE WITNESS: Gregory John Vanderhaar,
16 v-a-n-d-e-r-h-a-a-r.

17 THE COURT: Thank you.

18 Mr. Hughes?

19 MR. HUGHES: Thank you.

20 DIRECT EXAMINATION

21 BY MR. HUGHES:

22 Q. Sir, we can probably guess from your
23 attire, but can you tell us what you do for a
24 living.

25 A. I'm a firefighter-paramenic with the

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1 Verde Valley Fire Direct.

2 Q. How long have you been a paramedic?

3 A. Approximately three and a half years.

4 Q. And how long have you been with the Verde
5 Valley Fire District?

6 A. Five years this month. In April,
7 actually.

8 Q. And do you recall whether you were
9 working on or about October 8th of 2009, as a
10 paramedic?

11 A. Yes. I was.

12 Q. And can you tell us what training you had
13 to become a paramedic?

14 A. It was an extensive process. It was a
15 nine-month accelerated program. We had class two
16 days a week, and then we had several vehicular and
17 clinical hours that we were required to obtain.

18 Q. Did you have any sort of emergency
19 medical training prior to becoming a paramedic?

20 A. Yes, sir. I've been an EMT basic since
21 1995.

22 Q. Have you worked in that capacity as an
23 EMT basic prior to becoming a paramedic?

24 A. Yes, sir.

25 Q. Can you tell us where you worked and when

1 you worked as an EMT.

2 A. I worked for Colorado Springs Fire
3 Department for two years as a firefighter-EMT
4 there. I also worked in the behavioral health
5 company -- I'm sorry -- industry for approximately
6 five to seven years also in EMT capacity.

7 Q. Can you tell us what you recall, then,
8 how you came to be involved with this incident on
9 October 8th of 2009.

10 A. We were on duty and dispatched and
11 responded to it.

12 Q. Do you recall where you responded to?

13 A. Angel Valley Road.

14 Q. What did you see when you arrived at
15 Angel Valley?

16 A. When we initially arrived, we were
17 escorted onto the actual premises and led by a
18 gentleman in a golf cart down to what appeared to
19 be a sweat lodge.

20 Q. And where did you meet up that gentleman
21 in the golf cart?

22 A. It was up on the dirt road probably a
23 quarter mile away from the actual event.

24 Q. Was there a gate?

25 A. I don't recall.

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1 Q. Do you happen to recall that gentleman's
2 name?

3 A. No, sir.

4 Q. Did you prepare a report that detailed
5 your involvement with the incident at Angel Valley
6 on October 8th?

7 A. Yes, sir.

8 MR. HUGHES: May I approach?

9 THE COURT: Yes.

10 Q. BY MR. HUGHES: Showing you what's marked
11 as Exhibit 379, do you recognize that document?

12 A. Yes.

13 Q. What is 379?

14 A. That's my patient care report for that
15 incident.

16 Q. I'm going to ask you some questions about
17 it. One of your coworkers was on the stand
18 recently and explained what a lot of the terms in
19 this report mean. I'm not going to go back over
20 those terms. But I will ask, can you tell me
21 where -- if you recall when you first came upon a
22 patient that you wound up treating.

23 A. Once we arrived to the scene, we exited
24 the vehicle and just started pulling our equipment.
25 Saw that there was two patients that were having

1 **CPR done by bystanders at that point. I approached**
 2 **one patient. My partner approached another.**
 3 Q. Who is your partner?
 4 A. **Dustin Chambliss.**
 5 Q. You mentioned the scene. Can you tell us
 6 what you meant by the "scene," what you saw?
 7 A. **Saw a tentlike structure and several**
 8 **people outside of it, fairly chaotic. I believe --**
 9 **I recall there was some crying, general sense of**
 10 **panic. And two people, like I said, were having**
 11 **CPR done at the time. And then also while we were**
 12 **en route to that event, we were told of a third**
 13 **victim, a burn victim.**
 14 Q. And do you recall the area on the Angel
 15 Valley property that you were at, that you would
 16 consider to be the scene?
 17 A. **I don't know the exact area of the**
 18 **property. It was below the lodge in a large,**
 19 **dirt-pasture type area.**
 20 Q. Were there any structures in the
 21 immediate vicinity?
 22 A. **Not that I recall.**
 23 Q. Do you recall if a creek was nearby?
 24 A. **No, I don't.**
 25 Q. Okay. With respect, then, to your

1 report, I had a couple questions for you, a few
 2 things that are different terms. And I want to
 3 find out what those terms are. But before we get
 4 to that point, I'd like to ask with respect to the
 5 vitals that are noted on the report, do you --
 6 you've mentioned pupils were nonreactive. Do you
 7 recall whether the pupils were dilated or
 8 constricted?
 9 A. **No, I do not.**
 10 Q. And then turning to the meat of your
 11 report, you indicated that cardiac rhythm indicated
 12 PEA.
 13 A. **Yes, sir.**
 14 Q. That's a new term. Can you tell the
 15 jury, if you would, what "PEA" stands for.
 16 A. **PEA stands for pulseless electrical**
 17 **activity. There is electrical activity in the**
 18 **heart; however, it's not causing the heart to**
 19 **actually create a beat or contract.**
 20 Q. Is a PEA electrical activity something
 21 that is potentially able to be restored by an
 22 automatic defibrillator?
 23 A. **No, sir.**
 24 Q. And you indicated, then, down below this
 25 report that an I.V. was placed in the right

1 external jugular vein?
 2 A. **Yes, sir.**
 3 Q. We've heard other people getting I.V.'s
 4 in their arm. Who made the determination of
 5 whether to put the I.V. in the arm or jugular?
 6 A. **I made the determination.**
 7 Q. Do you recall why you decided to put the
 8 I.V. in the jugular?
 9 A. **The first attempt at the left antecubital**
 10 **was unsuccessful, so I went for a more pronounced**
 11 **route.**
 12 Q. Were you able to find a vein that you
 13 could put a needle into when you looked at the arm?
 14 A. **No, sir.**
 15 Q. And you indicated in your report the
 16 gauge of needle and the number of attempts to place
 17 that needle. Do you happen to recall how much
 18 fluid was infused into the patient by you?
 19 A. **I don't recall.**
 20 Q. Do you happen to recall who your patient
 21 was, what the patient's name was?
 22 A. **I came to find out the patient's name**
 23 **much later after the incident.**
 24 Q. And what did you come to find the
 25 patient's name was?

1 A. **James Shore.**
 2 Q. And I note that this report, as was
 3 Mr. Chambliss's report, indicates that your patient
 4 was a BVMC Doe?
 5 A. **Yes, sir.**
 6 Q. Is there any easy way to differentiate
 7 between Mr. Chambliss' report and your report to
 8 determine -- if someone was looking at this six
 9 weeks from now to determine which patient the
 10 report pertains to?
 11 A. **I haven't seen his report, so I couldn't**
 12 **answer that question.**
 13 Q. On this report it does have your name on
 14 the bottom?
 15 A. **Yes, sir.**
 16 Q. Would you expect Mr. Chambliss' report
 17 would have his name on the bottom?
 18 A. **Yes, sir.**
 19 Q. Do you recall the -- do you know whether
 20 the patient that you were treating -- Mr. Shore --
 21 whether he had been cooled at all? Did you see
 22 anything to lead you to believe he had been cooled
 23 prior to your arrival?
 24 A. **His skin was moist, but I don't know**
 25 **whether or not that was from cooling or what.**

1 Q. What was his condition? Can you tell us
2 as far as was he sitting up? Was he laying down?
3 A. **He was laying on his back.**
4 Q. And did he have any clothing on?
5 A. **No, sir. He was just covered by a towel.**
6 Q. Do you remember if that towel was wet or
7 not?
8 A. **I can't recall.**
9 Q. Do you remember if the ground around him
10 was wet or not?
11 A. **I didn't notice.**
12 Q. A couple other terms I wanted to ask.
13 We've heard about epi, or epinephrine. Can you
14 tell us what atropine is.
15 A. **Atropine is a drug used in cardiac**
16 **arrest. At least at this time it was. Protocols**
17 **have since changed. It's used to decrease vagal**
18 **tone on the heart. So in an effort to speed up the**
19 **beats of the heart.**
20 Q. What's a vagal tone?
21 A. **Vagal tone is a reference to the 10th**
22 **cranial node, the vagus node, that runs through the**
23 **heart and actually can -- when that nerve is**
24 **activated can slow the heart.**
25 Q. And did you see any change in the patient

1 after providing either the atropine or the
2 epinephrine?
3 A. **No, sir.**
4 Q. You indicated that towards the bottom of
5 the report, CPR begun approximately 1719 hours. Do
6 you know where you came by that information?
7 A. **That information came from our dispatch.**
8 Q. Do you know how the dispatch came by that
9 information?
10 A. **No, sir.**
11 Q. When you arrived at Mr. Shore's side, was
12 anyone performing CPR on him?
13 A. **Yes.**
14 Q. And can you tell us, was that one-person
15 or two-person CPR?
16 A. **I can't honestly tell you at this point.**
17 Q. Do you recall if it was effective CPR?
18 A. **Appeared to be at the time.**
19 Q. Do you recall whether Mr. Shore appeared
20 cyanotic or not?
21 A. **It's referenced in my report that he was**
22 **cyanotic.**
23 Q. As far as earlier in your report, there
24 is a reference as to the skin condition. It says,
25 warm. Can you tell us what you mean by "warm."

1 A. **Skin felt normal, normal skin**
2 **temperature.**
3 MR. HUGHES: Thank you, Mr. Vanderhaar. I
4 don't believe I have any other questions.
5 THE COURT: Thank you, Mr. Hughes.
6 Mr. LI?
7 MR. LI: Thank you, Your Honor.
8 CROSS-EXAMINATION
9 BY MR. LI:
10 Q. Mr. Vanderhaar, I'll be quick. You've
11 been a paramedic for three and a half years?
12 A. **Yes, sir.**
13 Q. With the Verde Valley Fire District?
14 A. **Yes.**
15 Q. And you're partners with Dustin
16 Chambliss?
17 A. **Yes, sir.**
18 Q. You arrived on the scene at approximately
19 5:40, 1740?
20 A. **Yes, sir.**
21 Q. And you were dispatched at approximately
22 1719?
23 A. **That's correct.**
24 Q. So it took about 21 minutes to get on
25 scene?

1 A. **Yes, sir.**
2 Q. And when you first arrived, you noticed
3 there were two people down?
4 A. **Yes.**
5 Q. And Dustin Chambliss went to one of them,
6 who was a woman?
7 A. **Yes.**
8 Q. And you went to the other one, who was a
9 man; correct?
10 A. **Correct.**
11 Q. And you later learned that his name was
12 James Shore?
13 A. **Yes, sir.**
14 Q. Now, there were people performing CPR on
15 both of them; correct?
16 A. **Yes.**
17 Q. And I know Mr. Hughes asked this, but I'm
18 going to ask you to search your memory. Were there
19 two people, one doing compression, one doing rescue
20 breathing, on these folks?
21 A. **I don't recall. I remember seeing at**
22 **least one person doing CPR at that time.**
23 Q. Do you remember if a woman about yea tall
24 came up and identified herself as a doctor who was
25 sort of supervising the scene?

- 1 **A. No, sir.**
 2 **Q.** Okay. But if -- you don't have any
 3 reason to dispute there was a doctor about yea tall
 4 who was supervising the scene?
 5 **A. No, sir.**
 6 **Q.** Just don't remember?
 7 **A. I don't recall that.**
 8 **Q.** Now, you had testified that they were
 9 doing effective CPR, what appeared to be effective
 10 CPR?
 11 **A. Yes, sir.**
 12 **Q.** And by that I mean -- obviously it wasn't
 13 working. But by that I mean correct CPR?
 14 **A. Correct. Yes.**
 15 **Q.** You, essentially, took over -- you looked
 16 at the scene, you evaluated, and then you took
 17 over?
 18 **A. Yes.**
 19 **Q.** Now, if we could talk a little bit about
 20 Mr. Shore's condition when you got there. He was
 21 unresponsive?
 22 **A. Correct.**
 23 **Q.** His Glasgow Coma Scale was 3?
 24 **A. Yes.**
 25 **Q.** Which is the lowest it possibly can be?

- 1 **A. Yes.**
 2 **Q.** Somebody who is deceased also presents
 3 with a Glasgow Coma Scale of 3; correct?
 4 **A. That's correct.**
 5 **Q.** He did not have a pulse?
 6 **A. No pulse.**
 7 **Q.** He was pulseless electronic activity?
 8 **A. Yes. Pulseless electrical activity.**
 9 **Q.** And you knew that because you had
 10 attached a life pack, some leads, to his body?
 11 **A. Yes, sir.**
 12 **Q.** I guess it's not the torso?
 13 **A. It's the arms and legs.**
 14 **Q.** Arms and legs. That helps measure
 15 whether there is electrical activity in the heart?
 16 **A. That's correct.**
 17 **Q.** And from that device you learned that
 18 he -- while there was electrical activity, he did
 19 not have a pulse?
 20 **A. That's right.**
 21 **Q.** I believe you testified in response to
 22 Mr. Hughes' question, that is not a shockable
 23 rhythm; correct?
 24 **A. Correct.**
 25 **Q.** By that I mean you cannot defibrillate

- 1 someone back in to a rhythm from that particular
 2 condition; correct?
 3 **A. No, sir.**
 4 **Q.** It would do absolutely no good at all to
 5 shock him; correct?
 6 **A. Correct.**
 7 **Q.** And, in fact, did you attach the pads?
 8 **A. Yes, sir.**
 9 **Q.** So you did attach the defibrillator pads?
 10 **A. Yes, sir.**
 11 **Q.** That's just your regular protocol in case
 12 you need to?
 13 **A. In case the rhythm changes.**
 14 **Q.** And the rhythm never changed, did it?
 15 **A. It did change to asystole.**
 16 **Q.** So it changed to worse?
 17 **A. Yes.**
 18 **Q.** Now, he also was suffering from apnea?
 19 **A. Yes.**
 20 **Q.** Which means he wasn't breathing?
 21 **A. Correct.**
 22 **Q.** And you reported that his skin was warm
 23 to the touch. By that you meant it was normal?
 24 **A. Yes.**
 25 **Q.** And it was somewhat moist?

- 1 **A. Yes, sir.**
 2 **Q.** You did not take his temperature?
 3 **A. No, sir.**
 4 **Q.** And that's because you were far more
 5 concerned about the cardiac situation?
 6 **A. Right.**
 7 **Q.** And the breathing situation; correct?
 8 **A. Right.**
 9 **Q.** And you are unaware of any effort to cool
 10 him down; correct?
 11 **A. I'm unaware of any effort.**
 12 **Q.** So you initiated CPR protocols at 1742,
 13 approximately?
 14 **A. Yes, sir.**
 15 **Q.** Okay. And I want to move that up. And
 16 part of those protocols was to attach an oxygen
 17 mask to his face?
 18 **A. Yes.**
 19 **Q.** That's a nonrebreather mask?
 20 **A. That's correct.**
 21 **Q.** And the reason was because he wasn't
 22 breathing on his own?
 23 **A. Right.**
 24 **Q.** So you set up an oxygen flow so that he
 25 can get some oxygen into his system?

1 A. Yes.
 2 Q. You also attached an AutoPulse?
 3 A. Yes.
 4 Q. An AutoPulse is a device that
 5 mechanically does compressions on the chest?
 6 A. That's correct.
 7 Q. And under CPR protocol, it's about 100
 8 compressions per minute?
 9 A. Yes.
 10 Q. The goal is to try to get that heart
 11 moving again?
 12 A. Yes.
 13 Q. You inserted an I.V. into the jugular at
 14 about -- well, where approximately does the I.V.
 15 go?
 16 A. It was the right jugular.
 17 Q. And I guess, according to your records,
 18 it looks like you -- under the milliliters, you see
 19 where that is right there?
 20 A. Yes, sir.
 21 Q. It says 15 milliliters; right?
 22 A. Yes, sir. That's the actual drop size of
 23 the tubing.
 24 Q. Got it. So you had a bag, and then you
 25 were putting it into the jugular; correct?

1 A. Yes, sir.
 2 Q. And the purpose behind that is
 3 predominantly to inject epinephrine and atropine
 4 into his system; correct?
 5 A. Yes, sir. It's a medication route.
 6 Q. And you need to get those medicines into
 7 him in a way that's effective. If you put it into
 8 his arm, nothing is going to happen because there's
 9 no real flow, is there?
 10 A. As long as there is adequate compressions
 11 occurring within infusion of medications, then the
 12 goal is that it will end up reaching the heart.
 13 Q. Right, Through the I.V., though?
 14 A. Yes, sir.
 15 Q. You wouldn't just stick it into the arm?
 16 A. Correct.
 17 Q. So you inject epinephrine to try and get
 18 a pulse, essentially. To stimulate heart activity?
 19 A. Yes.
 20 Q. You first injected one dose, 1 milligram,
 21 at 1750?
 22 A. Yes, sir.
 23 Q. This did not produce a result?
 24 A. No, sir.
 25 Q. So you injected epinephrine again at

1 1800?
 2 A. That's correct.
 3 Q. And then the ambulance left for the
 4 hospital at approximately 1803, which is up at the
 5 top of your --
 6 A. Yes, sir.
 7 Q. You again injected epinephrine at 1805?
 8 A. Yes, sir.
 9 Q. And, again, these are all an effort to
 10 get that heart moving again; correct?
 11 A. That's correct.
 12 Q. And it did not produce a result?
 13 A. That's correct.
 14 Q. You injected atropine at 1810; correct?
 15 A. That's correct.
 16 Q. And, again, the intention is to get the
 17 heart moving?
 18 A. Yes.
 19 Q. And it did not produce any stimulation to
 20 that heart?
 21 A. No, it didn't.
 22 Q. In fact, he eventually, fairly quickly,
 23 went asystole; correct?
 24 A. I believe, actually, he was asystole
 25 prior to the injection of atropine.

1 Q. Thank you. He was already asystole, and
 2 you were hitting him with atropine to try to
 3 stimulate the heart; correct?
 4 A. That's correct.
 5 Q. And you injected epinephrine again at
 6 1815?
 7 A. Yes, sir.
 8 Q. And that also produced no result?
 9 A. Correct.
 10 Q. And then you injected atropine again at
 11 1820?
 12 A. That's correct.
 13 Q. And this did not produce any result;
 14 correct?
 15 A. Correct.
 16 Q. You then drove Mr. Shore -- you were
 17 driving Mr. Shore to the hospital?
 18 A. Yes.
 19 Q. And you eventually arrived at the Verde
 20 Valley Medical Center in Cottonwood?
 21 A. Correct.
 22 Q. That was approximately 1823?
 23 A. Yes, sir.
 24 Q. And his status -- the only thing that
 25 happened to his status during the transport was it

1 actually declined; correct?
 2 **A. That's correct.**
 3 **Q.** His heart was never beating on its own --
 4 correct? -- at any point you were dealing with him?
 5 **A. Not at any point that I had any contact**
 6 **with him.**
 7 **Q.** And at any point you had contact with
 8 him, he was not breathing on his own; correct?
 9 **A. That's correct.**
 10 **Q.** And you turned him over to the doctors?
 11 **A. Yes.**
 12 **Q.** And he was pronounced dead at the
 13 hospital; correct?
 14 **A. That's my understanding. I wasn't there**
 15 **when that occurred.**
 16 **Q.** Thank you.
 17 THE COURT: Thank you, Mr. Li.
 18 Mr. Hughes?
 19 MR. HUGHES: Thank you.
 20 REDIRECT EXAMINATION
 21 BY MR. HUGHES:
 22 **Q.** Mr. Vanderhaar, do you know if Mr. Shore
 23 may have had a shockable rhythm prior to when you
 24 arrived?
 25 **A. I couldn't answer.**

1 **Q.** At some point after a person's heart
 2 stops beating, do they lose the ability to have a
 3 shockable rhythm?
 4 **A. Ultimately, once the heart stops beating,**
 5 **it will always deteriorate to asystole if there is**
 6 **no interventions made.**
 7 MR. HUGHES: Thank you. I don't have any more
 8 questions.
 9 THE COURT: Thank you, Mr. Hughes.
 10 Ladies and gentlemen, any questions for
 11 this witness?
 12 Counsel, please approach to look at the
 13 question.
 14 (Sidebar conference.)
 15 MR. HUGHES: I don't have any objection.
 16 THE COURT: Any objection?
 17 MR. LI: No objection.
 18 THE COURT: The attorneys do not object.
 19 (End of sidebar conference.)
 20 THE COURT: Mr. Vanderhaar, I'll ask the
 21 question. And the attorneys may want to follow up.
 22 Did you hear at any time when arriving at the
 23 scene, hear anyone say, is this a mass suicide or
 24 anything to that effect?
 25 THE WITNESS: I don't recall hearing that.

1 THE COURT: Follow up, Mr. Hughes?
 2 FURTHER REDIRECT EXAMINATION
 3 BY MR. HUGHES:
 4 **Q.** Mr. Vanderhaar, were there -- in addition
 5 to Mr. Chambliss and yourself, were there other
 6 EMTs and paramedics arriving at that scene.
 7 **A. Yes, sir.**
 8 **Q.** Were there other firefighters also?
 9 **A. Yes.**
 10 **Q.** How many would you reckon were there all
 11 together?
 12 **A. There were several. I couldn't give you**
 13 **a specific number.**
 14 **Q.** More than ten or less than 10?
 15 **A. I'm sorry. More than 10.**
 16 **Q.** And do you -- would you have any way of
 17 knowing what may have been said in their presence?
 18 **A. No.**
 19 THE COURT: Thank you.
 20 Mr. Li?
 21 RECROSS-EXAMINATION
 22 BY MR. LI:
 23 **Q.** You don't recall hearing anything like
 24 that, did you?
 25 **A. I don't recall.**

1 THE COURT: Anything else?
 2 MR. HUGHES: No, Your Honor.
 3 THE COURT: May Mr. Vanderhaar be excused as a
 4 witness?
 5 MR. HUGHES: Yes, Your Honor.
 6 MR. LI: Yes, Your Honor.
 7 THE COURT: Mr. Vanderhaar, you will be
 8 excused as a witness at this time. The rule of
 9 exclusion of witnesses still applies. If you wish,
 10 you can stay in the courtroom. But you cannot
 11 communicate in any way with any other witnesses
 12 about the case or your testimony until the trial is
 13 completely over.
 14 You really can't be talking to third
 15 persons who might pass it on to another witness.
 16 You really can't discuss the case or your testimony
 17 in any fashion where it could end up being
 18 communicated to another witness.
 19 Do you understand?
 20 THE WITNESS: Yes, sir.
 21 THE COURT: You can talk to the lawyers,
 22 though, without other witnesses present.
 23 You are excused at this time. Thank you.
 24 THE WITNESS: Thank you.
 25 THE COURT: Mr. Hughes or Ms. Polk?

1 MR. HUGHES: Your Honor, I'm afraid we thought
2 we'd be at 5:00 o'clock at this point. We don't
3 have any additional witness scheduled for this
4 evening.

5 THE COURT: Then we'll go ahead and recess.

6 Ladies and gentlemen, we'll take the
7 evening recess at this time. Please remember the
8 admonition, all aspects of that. And please be
9 back at the usual time, 9:15. We'll start as soon
10 as we can after that. Take care. I'll see you
11 tomorrow. And I'm going to ask the parties to
12 remain just a moment.

13 Thank you.

14 (Proceedings continued outside presence
15 of jury.)

16 THE COURT: I was just going to ask that the
17 parties be present at 8:45 tomorrow. There is an
18 evidentiary matter pending concerning the next
19 witness, I believe.

20 Mr. Hughes, anything further?

21 MR. HUGHES: No, Your Honor.

22 THE COURT: And Mr. Li or Mr. Kelly?

23 MR. KELLY: Judge, again, I'd simply
24 incorporate all my concerns articulated yesterday
25 afternoon. The bottom line is, we are not

1 prepared, given the recent information, to
2 cross-examine Michael Hamilton.

3 That's the position we're in at this
4 point. We have initiated our own independent
5 investigation. Alternatively, Judge, of course, I
6 suppose he can testify if his testimony were
7 restricted to the information provided prior to the
8 beginning of the trial, which would include those
9 areas that were disputed and discussed yesterday.

10 We are prepared to proceed with
11 Dr. Mosley as a witness. And that was the
12 individual we thought was going to be a witness
13 tomorrow, until just approximately an hour ago.

14 So it's not that we're trying to be
15 obstreperous. It's just simply I can't stand here
16 and say in good faith to this Court that we're
17 prepared to cross-examine Mr. Hamilton, given
18 everything we talked about yesterday. We're still
19 awaiting the ruling in regards to that request.

20 And we're also still awaiting a ruling in
21 regard to the Brady motion we filed. We believe
22 there is some potentially exculpatory evidence
23 relating to Angel Valley that needs to be discussed
24 and disclosed.

25 THE COURT: Has there been a response to that

1 motion, Ms. Polk?

2 MS. POLK: Which motion, Your Honor?

3 THE COURT: The Brady motion.

4 MS. POLK: No, Your Honor. The state is
5 preparing a response to that.

6 THE COURT: I didn't think I'd seen one.

7 MS. POLK: Yes.

8 THE COURT: Was filed fairly recently.

9 MR. KELLY: Judge, I just want to emphasize.
10 We're not just sitting here waiting. We did an --
11 we're trying to anticipate the scope of the state's
12 evidence as presented through the Angel Valley
13 employees and owners, given our discussion
14 yesterday.

15 So we have instituted a separate
16 investigation. We filed a Brady motion. I believe
17 Miriam filed that approximately a week ago. I
18 realize there is still a response time period. But
19 we are prepared to go forward with Dr. Mosley if
20 he's available.

21 MS. POLK: Your Honor, if I can respond
22 briefly. The state had Dr. Mosley lined up for
23 tomorrow. Based on the earlier discussion, the
24 defense had indicated they wanted to interview
25 Dr. Mosley.

1 We then contacted Dr. Mosley and
2 rescheduled him for an interview next Monday and
3 for him to testify on Tuesday. After that was
4 done -- then we contacted Mr. Hamilton to let him
5 know that we'd be calling him tomorrow.

6 After that was done, apparently the
7 defense no longer wants to interview Dr. Mosley.
8 But that one we already rescheduled for tomorrow.

9 Your Honor, I just want to point out that
10 with respect to Michael Hamilton, the only new
11 information that has been provided to the defense
12 are the photographs of the type of rat poison used
13 on that property.

14 Everything else was long ago disclosed to
15 the defense. And specifically in November of last
16 year, the state did a thorough disclosure to the
17 defense about the coverings used on the sweat lodge
18 itself, that they were stored in the pump house,
19 that the area is dry and bug-free, more information
20 about the tarps. We provided information about the
21 stones used, about the firewood, about the water
22 being poured, the incense, refreshments, and some
23 other issues.

24 So all of that has already been
25 disclosed. The only thing that was new was

1 obtaining from Mr. Hamilton information about
2 specifically what sort of rat poisoning is in that
3 pump house.

4 And what Mr. Hamilton did or his wife did
5 was take photographs of that particular brand of
6 rat poisoning so we could see what chemicals are in
7 it.

8 The defense has had that now for a week.
9 That was disclosed to them on March 25th or 24th.
10 They've had that now for about a week.

11 And then the state had also obtained an
12 affidavit from the manufacturer of the wood that
13 was burned in the fire. And Mr. Hamilton himself
14 knows they do not use treated wood on the property
15 for the cabins. That is not new information.

16 But the affidavit from the manufacturer
17 of the wood verifying that wood was not treated
18 when Mr. Hamilton acquired it, that also is new.
19 But that's a week old now.

20 MR. KELLY: Judge, I would merely point the
21 Court to the motion to extend time for disclosure
22 filed by the State of Arizona on March 24th, where
23 Mr. Hughes has signed the motion states, the state
24 is seeking to discover information relating to any
25 pesticide or poisons used at Angel Valley

1 during 2009.

2 The state is also seeking to discover
3 information relating to the composition of logs
4 used to heat the stones during the sweat lodge
5 ceremony. And then, of course, that's our concern
6 is this -- I don't know how to describe it. But
7 the cat's out of the bag, in terms of -- it's
8 everything we discussed yesterday about Michael
9 Hamilton.

10 He did go and discover this information.
11 Whether it's the affidavit received from
12 Mr. McKenna, whether it's the rat poisoning,
13 et cetera, we need now, given this representation
14 that the state was out to seek, to discover,
15 information, which they did go discover without
16 waiting for your order authorizing that. And now
17 we need more time.

18 MS. POLK: Your Honor, I'd like to respond.
19 The motion that the state makes to the Court is the
20 motion to extend the disclosure deadline. That,
21 then, upon order the Court allows us to introduce
22 that exhibit at trial.

23 It's not requesting permission from the
24 Court to further look into matters that have arisen
25 in court. We can do that without permission of the

1 Court. It's simply whether or not we can use that
2 information in the trial.

3 And, again, the underlying information
4 about the firewood not being treated was provided
5 to the defense in November of last year in a
6 supplemental disclosure. And specifically at that
7 time they were told -- provided information that
8 stated that the Hamiltons always used untreated
9 cedar logs, which were leftover pieces of the logs
10 they used for construction of our cabins.

11 There was additional information about
12 the stones in the tent, the tarps, the blankets,
13 where they were stored, that they were stored in a
14 dry, bug-free area.

15 The only information that's new is the
16 photograph of the type of rat poisoning and the
17 affidavit from the manufacture of the cedar logs.
18 Again, that was disclosed last week to the defense.

19 MR. KELLY: Judge, simply not true. I mean, I
20 paraphrased. The motion says based on the
21 defendant's opening statement and questioning of
22 witnesses, the state is seeking to discover,
23 discover, information regarding pesticides or
24 poisons, seeking to discover information regarding
25 the composition of logs.

1 We went through this yesterday. I
2 believe you even have the documents, the police
3 report, the direct inquiry of the Hamiltons in
4 regards to the information sought after. It
5 included the sand, which for the first time we
6 heard something about. It included information on
7 the logs that for the first time we heard something
8 about. And included information about pesticides
9 for the first time we heard about, coming from
10 Mr. Hamilton directly. And, finally, it included
11 information about rat poisoning for the first time
12 we heard about.

13 I believe Rule 15.6 is clear. You can
14 either deny leave, which is, I would argue, too
15 late, since the cat's out of the bag, or grant a
16 reasonable extension of time to complete this
17 information. That's what I'm requesting.

18 And Judge -- you know -- if there is any
19 sanction other than preclusion or dismissal -- so I
20 made my argument based on the February 28th order
21 that preclusion would be appropriate. I believe
22 you made it clear yesterday that that is not your
23 position.

24 So what we're asking for is sufficient
25 time to consider the information which the state

1 discovered last week. And we have not been simply
2 standing by. We've already initiated the
3 investigation in that regard because on top of
4 that, we were provided notice as to a list of
5 witnesses. And, again, it changes in a matter of
6 hours.

7 It's very difficult to prepare a defense
8 in that fashion. I understand that -- I'd allow
9 Ms. Do to address Dr. Mosley. Potentially the most
10 I'm going to require is very similar to Dr. Lyon as
11 it related to medical reports that he had reviewed.
12 And so a simple five- or ten-minute interview
13 tomorrow morning can resolve any questions that she
14 has.

15 We came back and indicated that, I
16 believe, to the state. And they said, no. We're
17 not going to call him.

18 We're ready to go with Dr. Mosley. I
19 think a telephone call would get him here.

20 MR. HUGHES: Your Honor, with respect to
21 Dr. Mosley, again, I talked to Ms. Do, I believe it
22 was before lunch this morning, and asked her if she
23 wanted to interview him. She said she did. I
24 asked her if we could do that interview tonight so
25 we could put him on the stand tomorrow.

1 She said there's no way she could do it
2 tonight. I asked her if we could do it this
3 weekend. She said she couldn't do it this weekend.
4 She's going for a personal trip for L.A. We
5 arranged -- we'd set a time on Monday.

6 At that point we then called off
7 Dr. Mosley and called on Mr. Hamilton for tomorrow.
8 And later this afternoon Ms. Do approached me in
9 the hallway and said she'd changed her mind. She
10 no longer wanted to interview the doctor. She
11 wanted to go ahead. The problem is by then we'd
12 already told the doctor that we weren't going to
13 call him tomorrow.

14 And I think it's inconsiderate,
15 particularly to a professional witness, to keep
16 yo-yoing him back and forth as to whether they're
17 coming to court or not coming to court. And that's
18 what we're trying to avoid, particularly with a
19 professional witness.

20 THE COURT: I had a conference phone set up in
21 the jury room that's not being used right now. So
22 that the interview could take place this afternoon.
23 I've done that just in case -- that we could be
24 ready with Dr. Mosley.

25 And then when I heard that they didn't

1 want to interview --

2 Ms. Do, you wanted to do that. It was
3 going to be delayed. Then I didn't even bring that
4 up, that we had set that up with that line.

5 Ms. Polk, did you want to address
6 something about the Hamilton question?

7 MS. POLK: Well, Your Honor, just briefly.
8 I'm not sure what point Mr. Kelly is making. But
9 in the state's 17th disclosure in November of 2010,
10 Bates stamps No. 5608, 5609, which was part of a
11 lot of information provided by the Hamiltons, it
12 clearly disclosed that their property is bug free
13 and the other information that I've told the Court.

14 Mr. Kelly keeps insisting somehow that
15 all of this is new, when, in fact, the information
16 about what happens at the property, how the
17 Hamiltons treat their property, the respect that
18 they treat it with, and all the materials used in
19 the sweat lodge as well as the sweat lodge site.

20 All that information about it has already
21 been disclosed. The defense chose not to interview
22 the Hamiltons, neither Mr. or Mrs. Hamilton. The
23 only thing that's new would be those photographs
24 showing pictures of the just one by -- I don't know
25 what it's called. It a rodent killer. And then

1 the affidavit regarding the wood itself.

2 But information that the wood is
3 untreated, that that's how they operate there, was
4 disclosed to them last November.

5 THE COURT: Mr. Kelly, that sounds like a
6 fairly confined area. You know -- I'm not going to
7 be allowing hearsay, for example.

8 MR. KELLY: Judge, here's the problem: And,
9 again, it's -- you now have an idea as to how the
10 issues are framed in this case, obviously after
11 four weeks and the testimony from the medical
12 experts in regards to other possible causes of
13 death. That's critical to the defense.

14 Michael Hamilton was disclosed. There is
15 no dispute about that. We were provided the
16 information relating to Michael Hamilton. And I
17 have copies of those interviews. In those
18 interviews none of these questions were asked.
19 Michael Hamilton was not disclosed as a
20 trial witness. It was only after Mr. Li's opening
21 statement did they notify us that Michael Hamilton
22 may testify.

23 And I would submit, Judge, that it's
24 disingenuous to stand up and say that we have
25 notice of this when on March 24th, the State of

1 Arizona is requesting a discovery -- requesting an
2 order from this Court to allow them to discover
3 information relating to pesticides or poisons used
4 at Angel Valley.

5 Without obtaining that order, they then
6 ask Michael Hamilton. And given the correspondence
7 between the Hamiltons and the State of Arizona
8 subsequent to that, it's my belief he's going to
9 get up and talk about items that we had no prior
10 notice of. That would be use of pesticides on
11 Angel Valley, the rat poisoning, the sand, and the
12 logs. So we haven't had notice.

13 I don't dispute what Ms. Polk says are in
14 the documents, because they have been. We had this
15 discussion yesterday in regards to due diligence.
16 That's true. But when they rang the bell or let
17 the cat out of the bag or had Detective Diskin
18 contact someone and gather information -- and now
19 we're at a significant disadvantage because we have
20 not had an adequate time to prepare for that
21 witness. That's my point.

22 I understand we're now in a difficult --
23 difficult situation because of what I would
24 characterize as a violation of the Court's orders
25 or the violation of the rules of disclosure and

1 discovery.

2 Michael Hamilton already knows. There is
3 no way to take that out of his brain. If he's
4 going to testify, Judge, I'd ask that his testimony
5 be limited to the interview conducted by the State
6 of Arizona, the notice that we had prior to the
7 beginning of trial.

8 THE COURT: He already knows what, Mr. Kelly?

9 MR. KELLY: He already knows -- they've
10 already rung the bell in regards to rat poisoning,
11 sand, pesticides, and firewood. That is new
12 information. If I understand Ms. Polk's argument,
13 she's going to say they knew about this because of
14 disclosure which involved other witnesses. And we
15 didn't know. We didn't know until yesterday.

16 THE COURT: I'm interested in what the
17 distinction is between the trial witness or not.

18 Ms. Polk, Mr. Kelly is indicating that
19 Mr. Hamilton was not really listed as a witness
20 until the trial started.

21 MS. POLK: Your Honor, the state had disclosed
22 him as a witness early on. He was not on our
23 original witness list. We amended the witness
24 list. I'd have to look at my notes. We amended, I
25 believe, shortly after -- immediately following the

1 opening by Mr. Li to add him as a trial witness.

2 But he's always been disclosed as a
3 witness. And, again, I don't understand how
4 Mr. Kelly can represent to the Court that they
5 didn't have this information, because it was
6 disclosed in our supplemental disclosure. And I
7 provided the Court with the Bates stamps.

8 The information has always been out there
9 directly provided to the defense. States right on
10 it that it is reports from Michael and Amayra
11 Hamilton. And the information is there. They
12 chose not to interview Mr. Hamilton or
13 Mrs. Hamilton.

14 And, again, the only thing that's new is
15 the photograph of the type of rat poisoning used
16 and the affidavit from the manufacturer of the
17 cedar wood.

18 MR. KELLY: Judge, we have two exhibits. What
19 we're talking about are the actual interviews of
20 Michael Hamilton conducted by the State of Arizona.
21 They're available. That's what they interviewed
22 Michael Hamilton about.

23 He had very little knowledge about
24 the 2009 incident and talks about things like
25 channeling. And one of them is a very brief

1 interview, and then one is slightly longer. There
2 is one on October 8th and then a second interview
3 on October 20th. And that's the extent of the
4 knowledge of the relevance of Michael Hamilton in
5 this case.

6 Judge, it's Exhibit 661. His attorney,
7 Mr. Zukowski, was present in the earlier interview
8 with Detective Winslow. He says to the effect I
9 really can't talk to you until I get approval from
10 my attorney. And then this is the main interview.

11 This is the disclosure as to the
12 substance of his testimony. He was disclosed and
13 he was taken off the trial witness list. And then,
14 only after Mr. Li's opening did we receive notice
15 that he was going to testify.

16 Then there is a motion that says we need
17 to discover information regarding pesticide and
18 wood, what I would characterize as discovery of
19 information without obtaining an order of the
20 Court, and then the disclosure as Mr. Hamilton as a
21 witness yesterday.

22 And, again, I believe Rule 20 --
23 Rule 15.6 clearly says either deny leave, which
24 means if they're going to present his testimony, he
25 can only testify in regards to what has been

1 disclosed in this interview -- you know -- those
2 subject areas. Or, alternatively, grant us a
3 reasonable extension of time to prepare. That's
4 all we're asking for.

5 If I may approach, Judge. 661 has been
6 marked. Of course, it's not admitted.

7 THE COURT: Was Michael Hamilton's name read
8 during voir dire to the jury panel? I've got the
9 list somewhere. I can check in the file.

10 MS. POLK: I don't know, Your Honor.

11 THE COURT: No one knows --

12 MS. DO: If the Court used the list that I had
13 prepared, Your Honor, I included names that would
14 be referenced from, not just the witnesses.

15 MR. LI: I think the Court read off the
16 witness list.

17 THE COURT: I read a very long witness list
18 during voir dire. And I just wondered if I read
19 Michael Hamilton. I'm sure I read Amayra Hamilton.

20 MR. KELLY: And if I may, Judge. The reason
21 the pending motion filed by Ms. Seifter is relevant
22 is we're asking for lawsuits and -- from the media.
23 I'm not asserting that the media information is
24 reliable. But from media information that I've
25 gleaned over the past couple weeks, apparently

1 Angel Valley has been sued by some Native American
2 groups and also by ten individuals.

3 And I'm not sure if we have all of the
4 information relating to lawsuits where they're
5 named as defendants relating to the 2009 incident.

6 And then we also know that Angel Valley
7 has sued James Ray and James Ray International. Of
8 course, we're aware of that.

9 The Brady motion was far greater in terms
10 of exculpatory -- proposed exculpatory information.
11 And I would submit that on a different day. That
12 needs to be argued. But that is a related reason
13 as to why we're not prepared to cross-examine
14 either Michael or Amayra Hamilton at this time.

15 THE COURT: While people are bringing this up
16 about lawsuits, I wanted to mention someone
17 mentioned to me -- just unsolicited -- that there
18 has been a bankruptcy filed or something also.

19 Is anybody aware of that?

20 I have no idea. It's one of those things
21 where you tell people, no. I don't want to hear
22 that.

23 MR. KELLY: We don't know, Judge.

24 THE COURT: I want to relay to people what I
25 might hear that might have any bearing on the

1 factual matter in the case. I don't know if that's
2 true. I heard that mentioned.

3 MR. KELLY: Judge, just as a very simple
4 practical question, isn't it possible just to get a
5 hold of Dr. Mosley, see if he's available?

6 THE COURT: I don't know. Why don't we --
7 let's recess at this point. We can check on that.

8 Thank you.

9 (Recess.)

10 THE COURT: I note Mr. Ray and the attorneys
11 are here. I went back and looked at the list.

12 Those are the two conceivable lists that were read,
13 and Michael Hamilton was not on them. I have the
14 state's amended list of witnesses, and it says an
15 added witness.

16 The defense is requesting to interview.
17 Under the circumstances, I'm going to permit that.
18 And that's going to be allowed.

19 I did -- I'd hoped that someone would try
20 to contact Dr. Mosley to see if that can be
21 salvaged. I don't know.

22 Ms. Polk?

23 MS. POLK: Your Honor, we will do that. We
24 can also contact some of the other local witnesses
25 to see if they're available tomorrow. As soon as

1 we find that out, we'll email the defense and let
2 them know who we have found for tomorrow.

3 THE COURT: Okay.

4 Mr. Kelly?

5 MR. KELLY: Fine.

6 THE COURT: If there is other lurking
7 problems, I'd --

8 MR. KELLY: No. I don't believe there is any
9 lurking problems other than one of simple notice.
10 To walk in here tomorrow morning or at 10 o'clock
11 at night to find out who the witness is going to
12 be, it's very difficult.

13 THE COURT: Is it possible to narrow the list
14 in the next few minutes?

15 MR. KELLY: Could you give us an --

16 MS. POLK: We can try, Your Honor. And we
17 have, as the defense knows, for next week we had
18 noticed -- both of the Hamiltons, Ted Mercer, Debby
19 Mercer, Sarah Mercer, and Fawn Foster for the
20 following week. They're all local.

21 The defense was on notice that we were
22 going to call them next week. And what I will do
23 is see if any of them is able to come tomorrow on
24 short notice.

25 THE COURT: That would seem reasonable.

1 Mr. Kelly?

2 MR. KELLY: So it's out of that group?

3 THE COURT: Just the following group,
4 essentially, that's already been suggested. The
5 Mercers and the other people Ms. Polk named.

6 MS. POLK: Fawn Foster, the Mercers, and the
7 Hamiltons. We'll hold off on the Hamiltons.

8 MR. KELLY: Foster, Fawn Foster or the Mercers
9 and Dr. Mosley.

10 THE COURT: That's next week. I think what
11 we're talking about is to have somebody for
12 tomorrow, just accelerate into that.

13 MR. KELLY: I thought we were going to call
14 Dr. Mosley.

15 THE COURT: Let's do that. In any event,
16 we're going to recess. Let me know what you know
17 before you leave. Please contact Dr. Mosley.

18 Thank you.

19 (The proceedings concluded.)

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24
25

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 11th day of April, 2011.

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MINA G HUNT, AZ CR No 50619
CA CSR No. 8335

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1 STATE OF ARIZONA)
2) ss: REPORTER'S CERTIFICATE
3 COUNTY OF YAVAPAI)

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 11th day of April, 2011.

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MINA G. HUNT, AZ CR No. 50619
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